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COMPREHENSIVE DEVELOPMENT AGREEMENT

This Comprehensive Development Agreement (the "Agreement") is made as of the 23rd day of June, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts, acting by and through its Board of Selectmen, and Roy C. Smith, as Trustee of High Street PCRC Trust u/d/t dated March 5, 1985, recorded with the Middlesex South Registry of Deeds in Book 18611, Page 409 and the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust"). Roy C. Smith individually and as Trustee of the Trust, any corporation, partnership or other entity undertaking a development pursuant to the terms of this Agreement in which Roy C. Smith has an interest and any of their successors or assigns shall hereinafter be referred to collectively as the "Developer".

RECITALS

Reference is made to the following facts:

- A. At a Special Town Meeting held in 1984, the Developer presented a written proposal (the "Development Proposal") with respect to the development of several parcels of land in the Town of Acton containing approximately 71 acres as more particularly described on Exhibit A attached hereto (the "Development Property"), seeking the approval of Town Meeting to designate the Development Property as a Planned Conservation Residential Community (PCRC) District pursuant to Section 9 of the Town Zoning By-Law. The Town Meeting made such a designation as to the Development Property.
- B. By deed dated March 25, 1985, recorded with the Middlesex South Registry of Deeds at Book 16067, Page 278, Roy C. Smith, individually, acquired a portion of the Development Property consisting of an approximately 18 acre parcel of land as more particularly described in the deed thereto. Roy C. Smith, individually, conveyed this 18 acre parcel by deed dated October 8, 1987, recorded with said Deeds in Book 18611, Page 445, to Roy C. Smith, as Trustee of the Trust.
- C. By deed dated October 8, 1987 from Norman R. Veenstra, recorded with said Deeds in Book 18611, Page 437, Roy C. Smith, as Trustee of the Trust acquired another portion of the Development Property consisting of three parcels of land containing approximately 39 acres more or less, as more particularly described in said deed.

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- D. By deed October 8, 1987 from Norman R. Veenstra, filed with said Registry District as Document No. 758060, and recorded with said Deeds in Book 1036, Page 179, Roy C. Smith, as Trustee of the Trust, acquired the balance of the Development Property consisting of a parcel of land containing approximately 14 acres more or less, as more particularly described in the deed thereto.
- E. Roy C. Smith, as Trustee of the Trust, is the owner of record as of the date hereof of the Development Property.
- F. The Developer agreed at public meetings held with the Town of August 25, 1987, and September 2, 1987, to develop the Development Property substantially in accordance with the terms and conditions of the Development Proposal as generally illustrated on a plan entitled "Overall Land Use Plan of Land in Acton Mass.," dated October 16, 1984, and in accordance with the terms and conditions of a special permit to be issued by the Town acting through its Planning Board under the PCRC District, and in no other manner.
- G. On October 9, 1987, the Developer and the Town entered into a Development Agreement (the "Prior Development Agreement"), a Release Agreement, a First Option Agreement and a Subordinated Option Agreement with respect to the Development Property, all of which are incorporated by reference herein. The Prior Development Agreement required the Developer and the Town enter into a Comprehensive Development Agreement upon the issuance of the special permit described in the preceding paragraph (F).
- H. On March 4, 1989, the Town, acting through its Planning Board, approved, subject to certain terms and conditions, the Developer's application for a Planned Conservation Residential Community special permit filed with a plan entitled "Audubon Hill in Acton, Mass.," dated August 1, 1988 (the "Special Permit"). On March 15, 1989, the Town, acting through its Conservation Commission, issued to the Developer an Order of Conditions with respect to the Development Property.
- I. The Developer and the Town now wish to coordinate the terms of all prior permits, conditions, orders and agreements by this Comprehensive Development Agreement to govern the relationship of the parties with respect to the Development Property.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I: GENERAL PROVISIONS

1.1 Definitions.

The following terms used in this Agreement shall have the meanings specified below:

Act: means Chapter 183A of the General Laws of Massachusetts, as it may be amended.

Affidavit of Compliance: means an affidavit executed as provided in Section 3.4.(e) hereof.

Affiliated Party: means as to any Person, (i) a member of the Immediate Family of such Person, (ii) the estate of any Person referred to in the preceding clause, (iii) the trustee of a trust for the benefit of any Person referred to in the preceding clauses (i) and (ii), (iv) an entity of which a majority of the voting and/or beneficial interest is owned by any one or more of the Persons referred to in the preceding clauses (i) through (iii), or (v) a Person who is an officer, director, trustee, employee, stockholder/beneficiary (15% or more) or partner of any entity which is a Person referred to in the preceding clauses (i) through (iv).

Agreement: means this Comprehensive Development Agreement, incorporating the Order of Conditions, the Special Permit and the Plan, as this Comprehensive Development Agreement may be amended from time to time.

Appraised Value: means, as to a Restricted Unit, the fair market value of the Restricted Unit as determined by a real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price reasonably established by the Developer. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

Approval Documents: means all documents required pursuant to the terms and conditions of this Agreement in

connection with the sale, conveyance or other transfer of a Restricted Unit, including an executed counterpart original of the purchase and sale agreement for the sale of any such Unit, Mortgage Lender's Certificate, a determination of the Maximum Resale Price of the Unit to be conveyed, and all Affidavits of Compliance which may be required.

Averitt Land: means that land more fully described in Exhibit B attached hereto and incorporated herein by reference.

Completion of Construction: means, as to any Phase, Subphase or Unit of the Project, that each of the following has occurred: (i) an architect duly licensed and qualified under the laws of the Commonwealth of Massachusetts has certified that such Phase, Subphase or Unit has been substantially completed in accordance with the plans and specifications therefor; (ii) the Town Designee has inspected such Phase, Subphase or Unit and determined that such Phase, Subphase or Unit is in compliance with the terms of this Agreement, the Special Permit and the Order of Conditions, as each may apply; and (iii) an authorized Town official has issued a certificate of occupancy, if one is required, for such Phase, Subphase or Unit.

Condominium: means the Audubon Hill North and the Audubon Hill South Condominium (which shall include the Town of Acton Senior Center), or any Subphase thereof, as contemplated in the Plan, to be established according to the provisions of the Act and built in accordance with this Agreement, the Special Permit and the Order of Conditions.

Condominium Association: means the unit owners' association established pursuant to the Condominium Documents for the Audubon Hill North Condominium or the Audubon Hill South Condominium or both in order to govern the affairs of the Condominium.

Condominium Documents: means those documents required under the provisions of the Act to submit the Development Property to the condominium form of ownership to establish the Condominium, in compliance and in accordance with the provisions of the Act, forms of which are attached hereto as Exhibit F and incorporated herein by reference.

Conservation Administrator: means the Person designated from time to time and employed by the Town to act as the Conservation Administrator of the Town, or any Person acting in a successor position so designated by the Town.

Conservation Restriction: means the conservation restriction substantially in the form of Exhibit D that is to

be placed on the Development Property by the Developer pursuant to the terms of this Agreement.

Construction Lender: means a bank, insurance company, savings and loan association, trust company or other institutional lender, or a noninstitutional lender which is approved in writing in advance by the Town, who holds a Construction Mortgage.

Construction Mortgage: means a mortgage on the Development Property given by the Developer to secure the payment of one or more loans which may be used only for the financing or refinancing of the construction of the Project in accordance with the terms of this Agreement, the Special Permit, the Order of Conditions and one or more construction loan agreements consistent with the aforesaid documents.

Development Property: means the real property upon which the Developer intends to construct the Project, as more fully described in the Site Plan attached hereto as Exhibit A and incorporated herein by reference.

Developer: means Roy C. Smith as Trustee of the High Street PCRC Trust, Roy C. Smith individually, and any Affiliated Party of Roy C. Smith undertaking development pursuant to this Agreement and any successor or assign.

Eligible Purchaser: means a Senior Citizen who satisfies the criteria set forth in the Guidelines in effect at the time the Senior Citizen is ready and willing to purchase a Unit. In addition, the Town and the Acton Housing Authority shall also be deemed Eligible Purchasers.

First Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987 concerning the Option A Property, recorded with the Registry of Deeds at Book 18611, Page 459, and incorporated herein by reference.

Guidelines: means the program documents attached hereto as Exhibit E and incorporated herein by reference, as they may be amended from time to time by the Town, which establish the criteria by which an Eligible Purchaser shall be determined.

Immediate Family: means with respect to any Person, his or her spouse, parents, parents-in-law, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

Improvements: means those buildings, structures and other improvements, including without limitation landscaping and paving, which shall be constructed on the Development

Property in accordance with the Special Permit, the Plan, the Order of Conditions and this Agreement.

Maximum Resale Price: means, as to any Restricted Unit, the price, as of a given date, equal to seventy five percent (75%) of the Appraised Value of such Unit, plus fifty percent (50%) of the cost of any appraisal required hereunder.

Mortgage Lender's Certificate: means that certificate issued by a bank, savings and loan association, trust company, or other institutional lender regarding a prospective purchaser's eligibility for a mortgage loan under FNMA or FHLMC standards in accordance with Paragraph C.2. of the Guidelines, as they may be amended from time to time.

North Phase: means the Phase of the Project which includes the construction of (i) the "Northern Phase" (Units 101-128, 130 and 132) and (ii) the landscaping and other facilities appurtenant to such Units as contemplated in the Plan.

Option A: means the option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option A Property under the terms of the First Option Agreement.

Option B: means the subordinated option granted by Roy C. Smith, as Trustee of the Trust to the Town with respect to the Option B Property under the terms of the Subordinated Option Agreement.

Option A Property: means that portion of the Development Property shown as "Option A Property" on the Site Plan excluding, however, any and all Units in the Project.

Option B Property: means that portion of the Development Property shown as "Option B Property" on the Site Plan.

Order of Conditions: means the Order of Conditions, DEQE File number 85-265, issued to Roy Smith, as Trustee of the Trust, by the Acton Conservation Commission pursuant to G.L. c.131, §40 on March 15, 1989, and incorporated herein by reference, and recorded with the Registry of Deeds at Book 19722, Page 505 and with the Registry District as Document No. 795846, which imposes certain terms and conditions on the development of the Project.

Person: means any individual, or general partnership, limited partnership, corporation, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, successors and assigns of such Person where the context so admits.

Phase: means a portion of the Project, as described in the Plan.

Plan: means a plan entitled "Audubon Hill, Acton, Mass.", dated August 1st, 1988, for land owned by High Street PCRC Trust, drawn by Acton Survey & Engineering, Inc., Gauchat Architects, Inc., and Carrol R. Johnson & Associates, Inc., consisting of 46 sheets and referenced as Exhibit 1 to the Special Permit.

Project: means the planning, construction, landscaping and all other related or similar development of the Development Property in accordance with the Plan, this Agreement, the Special Permit and the Order of Conditions, including, without limitation, the planning, construction and landscaping of the Condominium, the Improvements contemplated in Section 2.2 hereof and the Senior Center.

Registry of Deeds: means the Middlesex South Registry of Deeds.

Registry District: means the Middlesex South Registry District of the Land Court.

Restricted Unit: means a Unit subject to certain resale price restrictions, which restrictions are set forth in Article III hereof and in the Master Deed of the Condominium, and are incorporated herein by reference, for the benefit of the Town, its successors and assigns.

Security: means a letter of credit or similar secure financial commitment, the terms and conditions of which are acceptable to the Town, issued by a financial institution acceptable to the Town, provided by the Developer at the Developer's sole expense for the benefit of the Town.

Senior Center: means that portion of the Condominium's common areas and facilities which shall be constructed by the Developer as contemplated in the Plan, the Special Permit and the Order of Conditions and leased to the Town under the terms and conditions of a lease, attached as Exhibit H hereof and incorporated herein by reference, for use by the Town as a senior citizen's center.

Senior Citizen: means any natural Person fifty-five years of age or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a Unit to such Person.

Site Plan: means a plan entitled "The Site Plan of Audubon Hill in Acton, Mass." dated June 30, 1989 for land owned by Roy C. Smith, as Trustee of the Trust.

drawn by Acton Survey & Engineering, Inc., attached hereto as Exhibit A and incorporated herein by reference.

South Phase: means that portion of the Project which includes construction of (i) the improvements to the Conservation Area, (ii) the Senior Center, (iii) the "Southern Phase" (units 1-32 and 34, 36, 38, 40, 42, 44, 46 and 48) and (iv) the landscaping, utilities, access roads and other facilities appurtenant to the Senior Center and the aforesaid Units as contemplated in the Plan.

Special Permit: means the Planned Conservation Residential Community Special Permit granted on March 4, 1989, by the Acton Planning Board to Roy C. Smith, as Trustee of the Trust subject to and with the benefit of certain conditions, modifications, waivers and limitations, received and filed by the Acton Town Clerk on March 6, 1989 and recorded with the Registry of Deeds at Book 19722, Page 511 and the Registry District as Document No. 795847.

Subordinated Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987, concerning the Option B Property, recorded with the Registry of Deeds at Book 18611, Page 480 and with the Registry District as Document No. 758067, incorporated herein by reference.

Subphase: means any portion of any Phase, as described in the Plan.

Town: means the Town of Acton, acting through its Board of Selectmen.

Town Counsel: means Norman P. Cohen, Esquire, Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108, or such successor counsel, duly admitted to the practice of law in the Commonwealth of Massachusetts, as is designated by the Town.

Town Designee: means any person or entity designated by the Town in accordance with this Agreement to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or any designee of the Developer. The Town hereby designates the Town Manager, or his or her assignee as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals

and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

Unit: means a condominium unit so designated in the Master Deed of the Condominium.

Unrestricted Unit: means a Unit not subject to the restrictions contained in this Agreement with regard to resale price and purchase eligibility imposed on Restricted Units.

1.2 General Provisions.

(a) this Agreement shall supercede the Prior Development Agreement recorded with the Registry of Deeds at Book 18611, Page 447 and with the Registry District as Document No. 758064. Upon execution of this Agreement and its recording with the Registry of Deeds and the Registry District, the Town and Developer shall execute a document in recordable form releasing the Prior Development Agreement and a Release Agreement between Roy C. Smith, as Trustee of the Trust and the Town, dated October 9, 1987 and recorded with the Registry of Deeds in Book 11684, Page 367 (the "Prior Release Agreement"), which Prior Development Agreement and Prior Release Agreement shall thereupon be void and of no further effect. Promptly following execution of the aforesaid release, the Developer shall record, at its own expense, said release with the Registry of Deeds and the Registry District.

(b) Upon the Completion of Construction of the entire Project in accordance with (i) the terms and conditions of this Agreement, the Special Permit, the Plan, the Order of Conditions and any subsequent agreements or permits between the Town and the Developer concerning the Project, and (ii) all applicable laws, ordinances, bylaws and codes, the Town agrees to execute a release of this Agreement in recordable form, which the Developer may record at its sole expense with the Registry of Deeds and the Registry District. Notwithstanding any provision of the foregoing to the contrary, upon the release of this Agreement, the following independant documents and agreements shall remain in full force and effect according to their terms and the aforesaid release shall not alter or affect any of the following documents and agreements: the Conservation Deed Restriction (Exhibit D), the Lease of the Senior Center (Exhibit H), the Easement to Averitt Land (Exhibit I), the Condominium Documents (Exhibit J) and the Purchase and Sale Agreement (Exhibit K).

ARTICLE II: DEVELOPMENT

2.1. The Development.

The Developer covenants, promises and agrees, for itself, its successors and assigns, to develop the Project as follows:

- (a) to undertake and complete the development of the Project in accordance with this Agreement, the Plan and any plans and specifications referred to in the Special Permit;
- (b) to comply in all respects with the terms and conditions of the Special Permit, the Order of Conditions and all other agreements between the Town and the Developer; and
- (c) to comply with all building, zoning and other applicable laws, ordinances and regulations.

The Project shall be completed to the satisfaction of the Town on or before the date which is three (3) years from the date of this Agreement, provided, however that such date may be extended for up to one (1) year by the Town Planning Board as provided in the Special Permit and as further provided in this Agreement.

2.2. Conservation Land.

- (a) The Developer acknowledges and agrees to subject that portion of the Development Property shown as "Conservation Open Space" on the Plan and Site Plan to the Conservation Restriction in the form attached hereto as Exhibit D, which Conservation Restriction shall be recorded against the Development Property prior to the commencement of construction of any improvements or any portion of the Development Property. The Developer shall record the Conservation Restriction within thirty (30) days after the date of this Agreement.
- (b) The Developer shall grant to the Town an easement appurtenant to the Averitt Land, a perpetual easement for ingress and egress over, under and across the location shown generally on the Site Plan as "40 Ft. Wide Access Easement" and in the form of Exhibit C attached hereto (the "Access Easement"). Use of the Access Easement is to be limited strictly to access from High Street to the Averitt land for use of the Averitt Land for passive recreational uses and all maintenance on the Averitt Land for passive recreational uses; provided, however, that no such access shall be granted prior to conveyance of the first Unit.

Such easement shall be granted prior to the commencement of construction of any of Units.

- (c) The Developer will construct, in accordance with procedures required by the Town Engineering Administrator, at the Developer's sole expense, (i) a gravel road within the area of the Access Easement for the passage of vehicles from the area shown as "40 Ft. Wide Access Easement" on the Plan, and (ii) a five car gravel parking lot on the aforesaid Averitt Land at a location to be designated by the Town (collectively, the "Gravel Drives").
- (d) The Developer will, at its sole expense design and lay out a system of trails (the "Trails") over the existing Averitt Land and clear a burnt area of that land, pursuant to standards, conditions and procedures required by the Conservation Administrator.
- (e) The Developer shall present to the Town no later than sixty (60) days from the date hereof, a survey prepared by a registered land surveyor and approved by the Conservation Administrator, indicating the location of the Access Easement, Gravel Drives, and the Trails. The Developer shall obtain the Conservation Administrator's approval of the location of each of the Access Easement, the Gravel Drives, and the Trails.
- (f) The Developer shall obtain Security running to the Town for the full cost, as determined by the Conservation Administrator, of the Improvements contemplated in this Section 2.2.
- (g) The Developer shall complete the Improvements described in this Section 2.2 to the satisfaction of the Conservation Administrator on or before the completion of the South Phase or December 31, 1990, whichever occurs sooner provided, however, that if completion of such Improvements is delayed due to action or inaction attributable to the Town, such date shall be extended by a period equal to the delay attributable to the Town.
- (h) Within ten (10) days after (i) the Developer has given the Town Designee notice that the Developer has recorded the Conservation Restriction and supplied the Town Designee with a certified copy of the Conservation Restriction containing all appropriate recording information and (ii) the Security is issued, the Town shall execute, in a

form suitable for recording, a release of the First Option Agreement and deliver such release to the Developer. The Developer at its sole expense shall promptly record such release with the Registry of Deeds and the Registry District and provide the Town with a certified copy of such release as recorded.

- (i) Upon the completion of the Improvements contemplated under this Section 2.2., the Developer shall give the Conservation Administrator written notice of such completion and within ten (10) days of such notice, the Conservation Administrator shall inspect the Improvements and the Conservation Administrator shall determine whether these Improvements comply with the terms and conditions set out in Section 2.2 of this Agreement. If the Conservation Administrator determines that the Improvements are acceptable to the Town, the Town shall execute a release of the Security provided pursuant to Section 2.2(f), above and deliver such release to the Developer.
- (j) If the Conservation Administrator disapproves of any of the Improvements described in this Section 2.2, he or she shall so notify the Developer, in writing, specifying the reasons therefor. In the event of such disapproval, the Developer shall promptly correct any defects noted by the Conservation Administrator and the Conservation Administrator shall then reinspect said Improvements as provided in Section 2.2(i) above. Should the Developer fail to correct any such defect within ninety (90) days following the receipt of notice, the Town may, at its option, proceed to cause such defect to be corrected and draw upon the Security provided pursuant to Section 2.2(f) above for payment therefor.

ARTICLE III: RESTRICTION ON CONDOMINIUM DEVELOPMENT

3.1. Establishment of Condominium.

- (a) Concurrent with the execution of this Agreement, the Developer shall deliver to the Town Designee, with a copy to the Town Counsel, the Condominium Documents which shall be attached hereto as Exhibit F and incorporated herein by reference. The forms of the Condominium Documents, including without limitation, the declaration of trust of the Condominium trust, the by-laws of the Condominium trust and the master deed and Unit deeds shall be

subject to the approval of the Town; provided, however, that following execution of this Agreement and approval by the Town of the Condominium Documents, Town approval shall be required only for any amendment or other revision to the Condominium Documents which may be inconsistent with the provisions of either Section 3.3 or Section 3.4 of this Agreement. The Condominium Documents shall be consistent with the provisions and intent of this Agreement. The Condominium shall be comprised of seventy (70) residential Units, a community recreation building and the Senior Center.

The Condominium Documents shall provide that the Developer shall not exercise its voting rights under the Condominium Documents to amend any of the provisions of the Condominium Documents to be inconsistent with this Agreement without the prior written consent of the Town.

The approval by the Town of each amendment or revision of the Condominium Documents shall be conclusively established by an endorsement thereon signed and acknowledged by the Town Designee or any member of the Board of Selectmen of the Town stating that such document has been approved by the Town, except that only the first Unit deed and not subsequent Unit deeds need contain such endorsement.

- (b) Following execution of this Agreement, the Developer at its sole expense shall record the declaration of the Condominium trust, the by-laws of the Condominium and the Condominium master deed, all as approved by the Town, and take all other actions necessary to lawfully and validly submit the Development Property to the provisions of Chapter 183A of the Massachusetts General Laws, on or before the date thirty (30) days after Completion of Construction and in no event later than July 31, 1992 or as extended pursuant to this Agreement and the Special Permit. The Developer shall promptly deliver to the Town copies of all of the Condominium Documents as recorded, indicating the place of recording of same in the Registry of Deeds and the Registry District.

3.2. Improvements on the Development Property.

- (a) Except as otherwise expressly provided in this Agreement, no building, structure or other improvement shall be constructed or maintained on the Development Property, nor any alteration made

to the exterior of any building located on the Development Property except as contemplated or permitted by the terms of the Special Permit, the Plan, the Order of Conditions and this Agreement.

- (b) The Developer shall commence construction of the Project by constructing the South Phase. Excepting construction of access roads, utilities, preliminary site preparation work and the community center, the Developer shall not commence construction of any subsequent Phase of the Project until the Completion of Construction of twenty seven (27) Units in the South Phase.

3.3. Sale of Condominium Units by Developer.

- (a) Every Unit deed conveying an interest in a Unit shall contain a statement that such Unit is subject to the terms and conditions of Article III hereof, and shall contain a reference to the place of recording of this Agreement with the Registry of Deeds and the Registry District.
- (b) Every sale, assignment, resale or other conveyance of an interest in every Unit whether by the Developer or its successors, heirs or assigns, for a period of forty (40) years from the date of this Agreement, shall be to (i) a Senior Citizen, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family provided that the Unit so purchased shall be the residence of such Senior Citizen, and his or her spouse, if any. Each Senior Citizen or Senior Citizen and spouse acquiring an interest in a Unit shall utilize such Unit as their residence. Each Unit deed shall contain a statement incorporating the provisions of this Section 3.3(b).
- (c) At least thirty-five percent (35%) of the Units constructed on the Development Property, shall be Restricted Units, sold by the Developer subject to the resale restrictions described in this Agreement and the Guidelines attached hereto. These restrictions shall be incorporated into the Condominium's master deed and shall inure to the benefit of and be enforceable by the Town, its successors and assigns.
- (d) Without limitation the Developer will at all times use its best efforts to market and sell all Units.
- (e) Every unit deed conveying a Restricted Unit or an interest therein shall recite the resale

restrictions described in Section 3.4, and contain a statement that such Unit is a Restricted Unit subject to said provisions and of the Special Permit, and shall include such provisions within such deed or a reference to the place of recording of such documents with the Registry of Deeds and the Registry District.

- (f) The Developer agrees to convey five (5) Units to the Acton Housing Authority (the "AHA") at the election of the AHA for the price of sixty five thousand dollars (\$65,000) for each Unit on the terms and conditions set forth on the purchase and sale agreement attached hereto as Exhibit K, subject to approval by the Executive Office of Community Development. The Developer further agrees that three (3) of the Units referred to in the previous sentence shall be constructed as part of the South Phase of the Project and two (2) of such Units shall be constructed as part of any subsequent Phase of the Project. The Units to be so conveyed have been designated in five (5) Right of First Refusal agreements as executed by the Developer as of March 8, 1989 and attached hereto as Exhibit G. Upon execution of this Agreement, the terms and conditions of this Agreement and the attached Exhibit K shall govern the sale of such Units and the aforesaid five Right of First Refusal Agreements shall thereupon be void and of no further effect. Sixty (60) days prior to the estimated Completion of Construction of each Unit to be conveyed to the AHA, the Developer shall give the Town Designee and the AHA notice of the estimated date of the Completion of Construction of such Unit. The date of conveyance of the deed to each such Unit shall be thirty (30) days following the Completion of Construction of such Unit unless an earlier date is agreed to in writing by the parties. The Developer and the Town agree that time shall be of the essence of this agreement to convey the aforesaid Units. The aforesaid Units shall be Restricted Units for the purposes of this Agreement.
- (g) The Developer may only sell, convey or otherwise transfer a Unit for which the Developer has received a Certificate of Occupancy. Notwithstanding the foregoing sentence, the Developer may execute a Purchase and Sale Agreement for a Unit prior to receiving a Certificate of Occupancy. Until such time as Completion of Construction of the Senior Center has occurred, the Town shall grant Certificates of Occupancy only for

Units constructed in the South Phase in conformity with this Agreement. The Town shall grant no further Certificates of Occupancy with respect to Units in the Project until the Completion of Construction of twenty seven (27) Units in the South Phase and the Senior Center has occurred.

3.4. Conditions for Resale.

- (a) Age. For a period of forty (40) years from the date of this Agreement, no Unit or any interest therein shall be sold, assigned, conveyed or otherwise transferred, and no attempted sale, assignment, conveyance or other transfer shall be valid, unless the Person or Persons acquiring such Unit or interest shall be (i) one or two Senior Citizens, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family and such Senior Citizen or Senior Citizen and his or her spouse shall agree to utilize such Unit as their principal residence.
- (b) Price. For a period of forty (40) years from the date of this Agreement no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit for and in connection with the transfer of such Restricted Unit, is equal to or less than the Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such Unit. In the event that (i) the price restrictions contained herein are not extended as provided in the Condominium Documents or are withdrawn prior to the expiration of such forty (40) year period, or (ii) the Restricted Unit is sold pursuant to the terms and conditions of Section 3.4(h) below, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town, or such successor entity as is designated by the Town Board of Selectmen, to be held and invested in a trust as directed by the Town Board of Selectmen for the benefit of the Town's Senior Citizens. Upon payment of such excess sum to said trust, the Town Designee shall execute a certificate, in recordable form, acknowledging receipt of such monies. The interest on and corpus of said trust shall be applied only as directed by the Town Board of Selectmen.

- (c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted Unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.
- (d) Rental Prohibition. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Agreement. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by the owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of: the owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the Unit, amortized over their reasonable useful life; and any utility fees incurred by the owner in connection with the Unit.
- Prior to the rental of any Restricted Unit, the owner of said Unit shall provide the Town Designee with evidence, reasonably satisfactory to the Town Designee, sufficient to substantiate the preceding requirements of this Section 3.4(d).
- (e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit by the Developer, its successors or assigns, or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Person or Persons contemplating the purchase of the Unit (the "Prospective Purchaser"), identifying the Unit in question, the Seller and the Prospective Purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

- (1) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certification thereof; and

(11) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of a date not later than the date set for closing of the proposed sale.

(f) Certificate from Town: At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at its mailing address set forth on the first page of this Agreement or such other address for the Town as shall appear of record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or re-sale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(1) a certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

- (a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Agreement; or
- (b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or
- (ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or re-sale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (1) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any Restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in subsection (i) above referring to such Unit and such certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 3.4(f)(1) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Unit pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other

revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

- (g) Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.
- (h) Lack of Eligible Purchaser.
 - (1) In the event that the owner of a Restricted Unit places a Restricted Unit for resale on the open market by so notifying the Town Designee and, at such owner's option, by listing such Unit with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original notice to the Town Designee, the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance may the Restricted Unit be sold without compliance with the foregoing resale price restrictions, which restrictions shall

then be forever released as to the particular restricted Unit.

- (ii) In the event a Restricted Unit is sold as described in Section 3.4(h)(1), the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens as provided in Section 3.4(b) hereof.
- (iii) Prior to the sale of any Restricted Unit pursuant to this Section 3.4(h), the Seller shall deliver to the Town Designee an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of such Unit identifying the Unit, the Seller and the Prospective Purchaser and the names and ages of all persons in the Prospective Purchaser's household and stating and affirming:
 - (a) The date that the Seller notified the Town Designee that the Unit was listed for sale and the date such Unit was listed with a real estate brokerage company, if any; the name and address of such real estate company; and the specific time periods of such listing, including reference to the multiple listing service wherein the Unit was so listed for sale.
 - (b) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.
 - (c) That such Unit was offered to each Person listed on the waiting list kept by the Town Designee pursuant to Exhibit E hereto and that none of such Persons listed was either (i) an Eligible Purchaser or (ii) ready, willing and

able to purchase the Unit on customary terms for the Maximum Resale Price.

- (iv) Within ten (10) days of delivery of the documents required pursuant to Section 3.4(h)(iii) hereof, the Town Designee shall execute a certificate similar in form and content to the certificate described in Section 3.4(f) herein, except that such certificate shall also state:
 - (a) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the resale price restrictions contained in this Agreement;
 - (b) That the Town Designee on behalf of the Town waives the right to enforce the resale price restrictions set forth herein or any of them in connection with the proposed sale or transfer; and
 - (c) That the Town acknowledges receipt of funds required to be paid pursuant to section 3.4(h)(ii) herein and that the Unit in question is no longer a Restricted Unit and is released as a Restricted Unit and from these resale price restrictions in perpetuity.

3.5 Use.

- (a) The use of each Unit shall be restricted to residential housing only. Furthermore, no Unit shall be the residence of more than two (2) Persons who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Condominium Association, a member of the Unit owner's Immediate Family (other than spouse) may reside in such Unit upon a showing of good cause. Overnight guests may be allowed as provided in the Condominium Documents.
- (b) No Unit shall be rented, licensed, or sublet except to Senior Citizens or a Senior Citizen and spouse and, furthermore, a Restricted Unit shall be rented, licensed or sublet only as provided in Section 3.4.(d), above.

ARTICLE IV. SECURITY FOR PERFORMANCE OF
DEVELOPER'S OBLIGATIONS

4.1. As security for the performance of Developer's obligations hereunder, under this Agreement, the Special Permit, the Order of Conditions, and any other covenant and agreement with the Town, the Developer has done or shall do the following:

- (a) Post Security with the Planning Board. The purpose of such Security is to ensure that the Developer will construct all Improvements pursuant to Section 2.2 in accordance with the terms and conditions of this Agreement, the Special Permit and the Order of Conditions. The Planning Board shall determine the amount of the Security, the termination date of the Security, and shall administer the Security.
- (b) Pursuant to the First Option Agreement, the Developer has granted the Town Option A which, for a period of forty years, grants the Town the exclusive option to purchase the Option A Property and the improvements thereon, if any, and any rights appurtenant thereto for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 hereof.
- (c) Pursuant to the Subordinated Option Agreement, the Developer has granted the Town the exclusive option for a period of forty years to purchase all or any portion of the Option B Property and the improvements thereon, if any, and any rights appurtenant thereto, for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 of this Agreement.
- (d) The First Option Agreement and the Subordinated Option Agreement shall be merged into and made a part of this Agreement and the Town and Developer agree to execute and record with the Registry of Deeds and the Registry District, at the Developer's sole expense, an instrument releasing such Option Agreements concurrent with the execution and recording of this Agreement, provided that neither the First Option nor the Subordinated Option shall be released, in whole or in part, except in accordance with the provisions of this Agreement.

4.2. Encumbrances/Subordination. Developer agrees that prior to the Completion of Construction of the entire Project, Developer will not voluntarily convey, transfer, or otherwise dispose of the Development Property; and Developer

agrees that it will not mortgage, pledge or refinance the Development Property in such a manner as would prevent, or interfere with performance under this Agreement by Developer. Notwithstanding the foregoing, the Town hereby acknowledges that Option B shall be subject and subordinate to a certain Mortgage Agreement dated October 9, 1987, between Developer and Shawmut Bank, N.A. recorded with the Registry of Deeds at Book 18611, Page 473 and the Registry District as Document No. 758066, and to the interest of any other Construction Mortgage.

ARTICLE V. SENIOR CENTER

5.1 Construction of Senior Center. The Developer shall construct or cause to be constructed as a common area and facility in the Condominium a Senior Center on the Development Property as contemplated in and in conformity with the Plan, the Special Permit, this Agreement and the Order of Conditions. The Senior Center shall be constructed as part of and concurrently with the South Phase and in no event shall Completion of Construction of the Senior Center be later than one hundred eighty (180) days after the first building permit is issued for the North Phase.

5.2 Lease to Town. Upon the Completion of Construction of the Senior Center, the Developer shall execute, deliver to the Town and record with the Registry of Deeds and/or the Registry District, as appropriate, at the Developer's sole expense, a lease between the Town and the Condominium Association for the Senior Center upon the terms and conditions contained in the Lease attached as Exhibit H, incorporated herein by reference (the "Lease"). Such Lease and the Condominium Documents shall provide that in no event shall the Town be required to pay any form of condominium or common fees, special assessments or the like.

5.3 Maintenance of Senior Center. The Developer, or, following its creation, the Condominium Association, shall be responsible for the maintenance and repair of the exterior of the Senior Center (including, without limitation, the roof and load bearing walls) and the grounds surrounding it at its sole expense. The Condominium Documents shall provide for a sufficient budget and reserves for such maintenance. The Town shall be responsible for maintaining the interior of the Senior Center at its own expense. The Town shall establish reasonable standards for all such maintenance. In the event that the Town alters or expands the Senior Center, for example, by expanding the kitchen or the Senior Center's sewage demands, such action shall be contingent upon Town approval and authorization of each such action and shall be at no cost to the Condominium Association.

5.4 Insurance.

(a) Until the Completion of Construction of the Senior Center and execution of the Lease, the Developer or the Condominium Association shall keep the Senior Center insured in accordance with Article VII of this Agreement.

(b) Upon Completion of Construction and execution of the Lease, the Town shall keep the Senior Center insured as provided in the Lease.

ARTICLE VI. TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

6.1. No Transfer. The Developer agrees that it will not, prior to conveyance of all Units in the Condominium to unaffiliated third parties, including the conveyance of the Senior Center to the Town or its nominee, make or suffer to be made any assignment or any other transfer of any of its interest in the Property or any portion thereof or in this Agreement, other than sales of Units in accordance with the provision of this Agreement, except with the prior written approval of the Town. In order to receive such approval by the Town, a transferee or transferees shall have expressly assumed, for themselves and their successors and assigns, by written instrument satisfactory to the Town, all obligations of the Developer provided in this Agreement, and all legal documents employed in affecting a transfer pursuant to this Section 6.1 shall have been submitted to and approved by the Town; provided, however, that Developer may grant one or more Construction Mortgages on the Property to secure the payment of any loan or loans obtained by the Developer from a Construction Lender and provided further, that Developer may grant a second mortgage to the Bank of New England which is subordinate to this Agreement, the First Option and the Subordinated Option. The Developer shall deliver a copy of any Construction Mortgage, construction loan agreement and the aforesaid second mortgage to the Bank of New England to the Town Designee upon the execution of each such document.

The fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have expressly assumed all of the obligations of the Developer hereunder and all conditions and restrictions contained herein, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Town of or with respect to any rights, conditions or restrictions with respect to the Development Property or the construction of the Improvements thereon; it being the intent of this section, together with other provisions of this

Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership of the Development Property shall operate, legally or practically, to deprive or limit the Town of or with respect to any such rights, conditions or restrictions provided in or resulting from this Agreement with respect to the Development Property and the construction of the improvements thereon that the Town would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Town to the contrary, no such transfer or approval thereof by the Town shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the improvements, from any of its obligations with respect thereto.

6.2. Construction Mortgage; Rights and Obligations of Construction Lender:

- (a) No Construction Lender shall be deemed to have assumed or to be bound to perform the obligations of the Developer hereunder by reason of having acquired an interest in the Development Property for security purposes except as provided herein. A Construction Lender shall have the right to perform any action in order to cure or make good any default in the performance of the Developer's obligations under this Agreement, and the Town shall accept such performance by the Construction Lender to the same extent as if the same were performed by the Developer. If the Construction Lender shall acquire or succeed to the Developer's interests in the Development Property by reason of foreclosure or similar remedial action or upon conveyance of the Development Property in lieu of foreclosure, the Construction Lender shall be subject to only the obligations of the Developer accruing hereunder during the period in which the Construction Lender holds possession of the Property or owns the Developer's interest therein. The Town agrees that the Construction Lender may sell, assign or otherwise dispose of the Developer's interest to which it has so succeeded or which it has so acquired. Upon any such sale, assignment or disposition, such Construction Lender shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement after the effective date of such sale.

- (b) If a Construction Lender shall by written notice to the Town notify the Town of the execution, delivery and recording of a Construction Mortgage, and of the name and address of the Construction Lender for notice purposes, and of the recording reference of its Construction Mortgage, and with such notice shall furnish to the Town a true copy of its Construction Mortgage, the Town agrees that from the date of such notice until such Construction Mortgage shall be discharged or released of record, the following provisions shall apply:
 - (i) There shall be no cancellation, surrender, termination or modification of this Agreement by joint action of the Town and the Developer, without in each case first securing the prior written consent of each such Construction Lender;
 - (ii) The Town shall, upon giving to the Developer any notice of default under this Agreement, simultaneously give a copy of such notice to each such Construction Lender, and no notice of default given to the Developer shall be effective until a copy thereof has been given to each such Construction Lender. Whenever pursuant to this Agreement notice is to be given to a Construction Lender, a notice addressed to such Construction Lender at its address specified in accordance with the foregoing provisions of this section and otherwise complying with the terms of the notice provisions of this Agreement shall conclusively be treated as having been "given" within the meaning of the respective provisions hereof calling for notice to a Construction Lender;
 - (iii) Each Construction Lender shall have the same period after such notice of default has been given to such Construction Lender, for remedying any default of the Developer in performance of any of its obligations hereunder or causing the same to be remedied, as is given the Developer after the giving of such notice to the Developer, plus an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is

continuously prosecuted with diligence, and the Town shall accept such performance by such Construction Lender as if performed by the Developer.

- (iv) In the case of any such default by the Developer which is not susceptible of being cured by such Construction Lender, the Town agrees that it will take no action to obtain specific performance of this Agreement or to effect a termination of this Agreement by reason of such default without first giving to each such Construction Lender a reasonable period of time after notice under Subsection 6.2(b)(iii) either to obtain possession of the Development Property (including possession by receiver) and to cure such default, in the case of a default which can be cured when such Construction Lender has obtained possession, or to institute foreclosure proceedings and to complete such proceedings or otherwise to acquire the Developer's interest, in the case of a default which cannot be cured by such Construction Lender without first obtaining the interest of Developer in the Development Property; provided, however (1) that such Construction Lender shall not be required to continue such possession or to continue such foreclosure or other proceedings if said default shall be cured, (2) that the period for obtaining possession or acquiring the interest of the Developer by foreclosure or otherwise, as the case may be, shall be extended for any period during which such action is enjoined or stayed by a court of competent jurisdiction, (3) that such Construction Lender shall continue good faith efforts to perform all of the Developer's other obligations under this Agreement which are susceptible of being performed by such Construction Lender during the period of such forbearance, and (4) that nothing herein shall require any such Construction Lender to begin or continue such possession or foreclosure or other proceedings or preclude the Town from exercising (subject to the provisions of this Article VI) any rights or remedies under this Agreement with respect to any other defaults by Developer during the period of such forbearance;

- (v) In the event of the termination of this Agreement for any reason, or in the case of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, the Town agrees to enter into a new agreement with the Construction Lender effective as at the date of such termination, rejection or disaffirmance, upon all the covenants and agreements, terms, provisions and limitations contained in this Agreement (including, without limitation, this section), provided that such Construction Lender shall, in writing, request the Town to enter into such new agreement within sixty (60) days after the effective date of such termination, rejection or disaffirmance. The provisions of this clause shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this clause were a separate and independent agreement, and during the period ending 60 days after the effective date of the termination, rejection or disaffirmance of this Agreement, any such Construction Lender may quietly enjoy the Property without hindrance by the Town or any person or party claiming by, through or under the Town.
- (vi) Within fifteen (15) days after receiving a written request so to do from any such Construction Lender, the Town Designee shall deliver to such Construction Lender a statement, certified by an authorized official, stating either (1) that this Agreement is in full force and effect and no default hereunder has occurred and is then continuing, or (2) that this Agreement is then in default, specifying the nature and status of such default. If such statement is not delivered by the Town Designee to the Construction Lender so requesting it within fifteen (15) days after such request, such Lender may conclusively assume that this Agreement is in full force and effect and that no default hereunder has occurred and is then continuing.

ARTICLE VII. INSURANCE

7.1. Insurance Coverage:

- (a) The Developer or the Condominium Association shall, until the Completion of Construction of the entire Project and establishment of the Condominium, keep the Development Property, any buildings and improvements now or hereafter situated on the Development Property, and all of the insurable property and equipment in respect of the Development Property insured by fire and extended coverage insurance and builder's risk insurance to the same extent and amount which is normally required by institutional mortgagees for similar property and equipment. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than the full insurable replacement value of the Development Property (other than land and foundations) and equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and loss thereunder shall be payable to the Developer, the Construction Lender, and to the Town as their interests may appear.

The Developer shall also maintain in full force from the date upon which the Developer first enters the Development Property for any reason, and thereafter until the Completion of Construction of the entire Project a policy of comprehensive public liability insurance, including the so-called broadening endorsement (i.e., broad form) written on an occurrence basis, insuring against all claims for injury to or death of persons or damage to property on or about the Development Property or arising out of the use of the Development Property and under which the Town, such other persons as may be set forth in a notice given from time to time by the Town, any Construction Lender and the Developer are named as insureds, as their respective interests appear, each with the same effect as if separately insured. The minimum limits of liability of such insurance shall be: Bodily injury - \$1,000,000 per occurrence and in the aggregate over the term of the policy, and Property Damage - \$500,000 per occurrence. The Construction Lender shall have the right from time to time to increase such minimum limits upon notice to the Developer, provided that any such increase shall

provide for coverage in amounts similar to like coverage being carried on like property in the greater Boston area.

Furthermore, the Developer shall obtain or cause to be obtained appropriate Worker's Compensation insurance.

- (b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.
- (c) Certificates of such policies and renewals thereof shall be filed with the Town on or about the effective date thereof.

7.2. Town May Procure Insurance if Developer Fails To Do So:

In the event the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Town at its option may, without limiting any other rights or remedies available to the Town, procure or renew such insurance, and all amounts of money paid therefor by the Town shall be payable by the Developer to the Town with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the Town to the date of payment thereof by the Developer. Ten (10) days prior to procuring or renewing any such insurance, the Town shall notify the Developer or the Condominium Association, whichever is the named insured, of its intention to procure or renew such insurance. In the event that the Developer or Condominium Association, as appropriate, has not provided the Town with evidence satisfactory to the Town Designee of such insurance within five (5) days of such notice, the Town may proceed to procure such insurance. The Town shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by the Town. In the event the Town has not received payment from the Developer for the cost of any such insurance procured or renewed by the Town, plus interest accrued within twenty (20) days from the giving notice of notice by the Town to the Developer, the Town shall have a continuing lien against the Development Property for such amounts and shall be entitled to record such lien against the Development Property.

7.3. Developer's Obligations With Respect To Restoration And Reconstruction:

- (a) Whenever any Improvement, or any part thereof, constructed on the Development Property shall be

damaged or destroyed prior to Completion of Construction of the entire Project and establishment of the Condominium for the entire Project, lease of the Senior Center to the Town, and thereafter until all Units have been sold by the Developer to Persons who are not Affiliated Parties of the Developer, the Developer shall (to the extent permitted under the Condominium Documents, if the Condominium shall have been established at such time, and with the consent of the Construction Lender) proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvement, shall be deposited in a separate account of the Developer or of any Construction Lender.

- (b) The insurance money and any other proceeds so collected, to the extent such proceeds are available to the Developer, shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction in accordance with the approved plans and specifications referred to in the Special Permit to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any Construction Lender, and subject to the Condominium Documents if the Condominium shall have been established at such time.
- (c) Subject to the provisions of the Condominium Documents if the Condominium shall have been established at such time, the Developer, with the written approval of the Town and any Construction Lender, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and, in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be paid to the Developer, subject to the requirements of Article V with respect to insurance proceeds arising out of damage to or destruction of the Senior Center, and subject to the rights of any

Construction Lender. In such event, the covenants and restrictions contained in the Deed shall terminate as to those Improvements or portions thereof which have been damaged or destroyed and not reconstructed or restored.

- (d) Developer shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been so destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any Construction Lender (or, if the conditions then prevailing require a longer period, such longer period as the Town may reasonably approve in writing), to the extent such funds are available, and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within eighteen (18) months after the start thereof.

ARTICLE VIII. RIGHTS, REMEDIES AND PROCEDURES
IN THE EVENT OF A BREACH BY DEVELOPER

8.1. Failure by Developer to Complete Construction,
Establish the Condominium or Discharge Encumbrances;
Unauthorized Transfers of Interest:

- (a) If the Developer shall fail to perform its obligations under this Agreement with respect to commencement and completion of construction of Improvements in accordance herewith and with the Special Permit, the Plan and the Order of Conditions; or
- (b) If the Developer shall fail to establish the Condominium as provided in Section 3.1 or shall employ for such purpose any procedure or document not in accordance with this Agreement or approved in writing by the Town; or
- (c) If the Developer shall place or suffer to be placed on the Development Property any encumbrance or lien not expressly permitted by this Agreement or authorized in writing by the Town which is not discharged within fifteen (15) days after the Developer receives notice of such encumbrance or lien, unless such encumbrance or lien cannot be discharged within such fifteen-day period, in which case the Developer shall commence to discharge such encumbrance or lien promptly within such fifteen

(15) day period and thereafter continuously and diligently complete the discharge of the same; or

- (d) If there is any transfer of the Development Property or any part thereof or interest therein in violation of this Agreement, or if the Developer shall fail to perform any other obligation under this Agreement;

Then the Town or Town Designee shall provide Developer with written notice of such noncompliance, which notice may be recorded.

Subject to the provisions set out below, and in the event that Developer fails to cure such noncompliance within sixty (60) days after receipt of notice of noncompliance unless such noncompliance cannot be cured within such sixty day period, in which case the Developer shall commence to cure such noncompliance within such sixty (60) day period and thereafter continuously and diligently complete the cure of the same, the Town has the right to exercise either Option A or Option B, or both options, as provided in this Agreement. Notwithstanding the foregoing, no failure of the Town to exercise Option A or Option B or both following a notice of noncompliance as set forth above, shall be construed as a waiver of any rights of the Town to exercise Option A or Option B or both under this Agreement;

The Town shall have the right to exercise Option A or Option B or both by a written notice given by the Town to Developer on or before the earlier to occur of October 9, 2027 or the date of recording of an instrument signed by the Town terminating either such Option. Such written notice shall specify which option the Town is exercising. The Developer shall deliver the deed to the property specified in the written notice to the Town on or before the sixtieth (60th) business day following the determination of the purchase price as set forth in Section 8.3 below, hereinafter referred to as the Closing Date.

After the Town has received written notice from the Developer of the existence of an institutional lender holding a first or second mortgage of record on all or any portion of the Development Property in accordance with the provisions of Article VI hereof, the Town shall send copies of all notices of noncompliance under this Article VIII to such institutional mortgagee of record, and each such institutional mortgagee shall have the right concurrently with Developer to cure any noncompliance. The curing of such noncompliance by any such institutional mortgagee of record shall be treated as performance by the Developer, but nothing herein shall be deemed to impose an obligation on any such

institutional mortgagee of record to cure any noncompliance under this Article VIII.

8.2. Zoning. In the event that the exercise of Option A and the acquisition of the Option A Property by the Town would create a nonconformity as to zoning for the Developer's approved development of the Development Property as set forth in this Agreement, the Town shall have no right to exercise Option A to purchase the Option A Property unless, within one hundred and eighty (180) days of its notice to the Developer of noncompliance with this Development Agreement or other permits, approvals or agreements as set forth in Subsection 8.1(a) above, the Town's Zoning Board of Appeals shall have granted a variance or such other zoning relief as may be necessary to cure the nonconformity created by the exercise of Option A and shall have followed the necessary procedures to grant and implement such variances or other zoning relief (which may, in some instances require taking a vote at a Town meeting).

8.3. Purchase and Sale Agreement. As soon as possible after the exercise of either Option, the Developer and the Town shall enter into a purchase and sale agreement substantially in the form of the attached Exhibit L, which agreement shall govern the consummation of the conveyance of the appropriate Option Property and shall incorporate the terms and conditions of this Agreement, including without limitation the Closing Date and Purchase Price. The Town and Developer agree that time shall be of the essence of this Agreement. The purchase price of the Option A Property, or the Option B Property, as the case may be, shall be the fair market value of such property as of the date of the exercise of the option pertaining to such property. In the event that the Town and the Developer cannot agree in writing on such purchase price within ten days of the exercise of either Option then the purchase price of either the Option A Property or the Option B Property, as the case may be, shall be determined by appraisal of the fair market value of such property as of the date of the exercise of the option as follows. Within twenty days of the Town's exercise of either Option A or Option B, or both, the Town and the Developer shall each designate an impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts, to determine the fair market value of the Option A Property or the Option B Property. The expense of each appraiser shall be the responsibility of the party designating the appraiser. The unanimous written decision of the two appraisers so chosen shall be conclusive and binding upon the Developer and the Town. If the two appraisers shall fail to reach a unanimous written determination as to the purchase price within thirty days, the two appraisers shall designate a third impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts. The expense of the third

appraiser so selected shall be divided equally between the Town and the Developer. The written decision of a majority of the three appraisers so selected shall be rendered within thirty days and shall be conclusive and binding on the Town and the Developer as to the purchase price.

8.4. Termination of Option A. Option A may be terminated in advance of its scheduled expiration date solely pursuant to Section 2.2 hereof and in no other manner.

8.5. Termination of Option B. Option B shall be terminated as follows. Upon the issuance of the first building permit for the South Phase, the Town shall execute a release, in recordable form, with respect to all of the property covered by the Subordinated Option, except for that portion of the Development Property on which the North Phase will be constructed. The first building permit for the South Phase shall be issued only after the Developer has constructed the access roads and utilities in accordance with the Plan, the Special Permit and the Order of Conditions and to the satisfaction of the Town Designee. Following the Completion of Construction of twenty seven (27) Units and the Senior Center in the South Phase, the Town shall execute a release, in recordable form, of the balance of the Option B Property, applicable to the North Phase. Following termination of the Town's rights under this Agreement with respect to all Phases of the Project, the Town shall, at the request of Developer, execute an instrument in recordable form, acknowledging termination of all of its rights under Option B, and Option B shall be of no further force and effect between the parties.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Waiver. Except as otherwise expressly provided herein, failure on the part of either party of this Agreement to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent action by such party.

9.2. Invalidity of Particular Provisions. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall, at any time or to any extent, be invalid or unenforceable, the

remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9.3. Provisions Binding. This Agreement may be cancelled, modified or amended only by a written instrument executed by both parties hereto.

9.4. Governing Law. This Agreement and the performance hereof shall be governed exclusively by the laws of Massachusetts, as the same may from time to time exist.

9.5. Recording. The parties hereto agree that a fully executed original of this Agreement shall be recorded with the Registry of Deeds and the Registry District. The entire cost of recording this Agreement shall be borne by the Developer.

9.6. Notices. Except as otherwise expressly provided herein, whenever notices, demands, requests or other communications shall or may be given under this Agreement either to the Town or to the Developer, the same shall be deemed adequately given if in writing and hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested: If intended for the Town, addressed to it at the mailing address set forth on the first page of this Agreement, with copies to the Town Counsel; and, if intended for Developer, addressed to the Developer at the mailing address set forth on the first page of this Agreement, with copies to Richard M. Cotter, Esquire, Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and Stanley L. Gordon, Esquire, D'Agostine, Levine & Gordon, P.C., 268 Main Street, Acton, Massachusetts 01720; or to such other address or addresses as may from time to time hereafter be designated by either party to the other by like notice; and such notices shall be effective upon receipt if hand delivered or upon deposit in the U.S. mail if subsequently received.

The Town and the Developer each agree to give prompt written notice to the other party of all material notices received by it from third parties relating to the Development Property.

9.7. Interpretation. As used herein, the singular shall include the plural and the plural shall include the singular as the context may require. The article and section headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the

interpretation, construction or meaning of the provisions of this Agreement. References herein to successors and assigns of the Developer are not intended to constitute a consent to assignment or transfer by the Developer but refer only to those instances in which the Town shall have given consent thereto in accordance with the terms of this Agreement.

9.8. No Partnership. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any association between the Town and the Developer, or cause the Town to be responsible in any way for the debts or obligations of the Developer.

9.9. Secondary Mortgage Market. So long as no substantive changes are required, the Town agrees to modify the restrictions contained herein and to be contained in the various documents required hereunder if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require such modifications as a condition precedent to its approval or agreement to acquire mortgages on the Units given or to be given in connection with the sale of such Units to persons or entities not a party to this Agreement.

9.10. Certificates of Completion and Release of Conditions. If and when the Developer shall have performed and complied with some or all of the agreements and conditions set forth in this Agreement, the Town shall upon request of the Developer deliver to the Developer one or more certificates of completion and release of such conditions, in recordable form, signed by the Town Designee and stating that the Developer has performed and complied with some or all of the agreements and conditions set forth in this Agreement to the satisfaction of the Town. Such a certificate shall be conclusive evidence of the Developer's performance of such agreements and compliance with such conditions as are stated in such certificate and of the release of the Developer and the Development Property from such conditions by the Town, provided, however, that such certificates shall not discharge or release the Developer, its successors or assigns or the Development Property from the terms, conditions, covenants and restrictions contained in the Condominium's master deed the Order of Conditions and in the Special Permit, or from building, zoning and other applicable laws, ordinances or regulations.

9.11. Authority of Developer. The Developer and any officer or trustee of the Developer executing this Agreement and any other documents required in connection with this Agreement or any conveyance to be made hereunder hereby warrant that they have the requisite power and authority to enter into and carry out this Agreement and all other documents executed and delivered in connection herewith or therewith. The execution

and delivery of this Agreement and all other documents executed and delivered in connection with this Agreement have been duly authorized in accordance with the Developer's Declaration of Trust (including any required action of all beneficiaries of the Trust) or by the Developer's board of directors, as applicable, to the extent required by law or the Developer's articles of organization, by-laws, or declaration of trust, as applicable and no other action of the Developer is required for the execution, delivery and performance of this Agreement, and all other documents executed and delivered in connection herewith or therewith.

9.12. Town's Consent. Where the consent or approval of the Town, the Town Designee or the Conservation Administrator is required under the terms and conditions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

9.13. Delay Beyond Developer's Control. In the event that the Developer's performance pursuant to the terms and conditions of this Agreement is delayed due to Town action or inaction, other governmental regulation, unusual scarcity of or inability to obtain labor or materials, strikes, labor difficulties, casualty, market conditions or other causes reasonably beyond the Developer's control, the dates for performance required hereunder shall be extended by a period equal to that of the aforesaid delay; in no event, however, shall the dates for performance required hereunder ever be extended by more than one year. The parties acknowledge, however, that the Town may extend any such date in its sole discretion, which discretion may not be unreasonably exercised for any reason, by granting written permission to extend any such date.

9.14. No Assignment.

(a) Neither The Town nor the AHA shall assign or transfer its rights to purchase any of the five (5) Restricted Units granted hereunder, except that such right may be assigned or transferred to another municipal or quasi-municipal not-for-profit agency or organization.

(b) The Town has entered into this Agreement with the Developer in reliance upon the unique knowledge, experience and expertise of the Developer in the planning and implementation of construction of the Project. The Developer shall not voluntarily assign, transfer or otherwise convey its rights and obligations hereunder, including any transfer, assignment or conveyance to a corporation or other entity owned or controlled by Roy C. Smith or the Developer, without the written permission of the Town Designee.

9.15. Rule Against Perpetuities.

If the Rule Against Perpetuities or any rule of law with respect to restriction on the alienation of the Property shall limit the time within which any event or events hereunder must occur, then such event or events, as the case may be, to which such rule applies shall not occur later than the expiration of 20 years after the death of Roy C. Smith, Nancy E. Tavernier, William Weeks, Donald Gilberti, or any of their issue now living.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal this 23rd day of June, 1989.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

Nancy E. Tavernier

[Signature]

Donald R. Gilberti

[Signature]

High Street PERC Trust

By [Signature]
Roy C. Smith, as trustee

[Signature]
Roy C. Smith, Individually

Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Nancy E. Tavernier,
William F. Weeks, Donald R. Gilbert and Norman D. Lake and
acknowledged the foregoing instrument to be the free act and
deed of the Board of Selectmen of the Town of Acton, before
me

David Y. Bannard
Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996
Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Roy C. Smith,
as trustee of High Street PCRC Trust, and acknowledged the
foregoing instrument to be his free act and deed as trustee
as aforesaid.

David Y. Bannard
Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996
Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Roy C. Smith,
and acknowledged the foregoing instrument to be his free act
and deed, as an individual, before me.

David Y. Bannard
Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996

EXHIBITS TO DEVELOPMENT AGREEMENTEXHIBITTITLE

Exhibit A:	Site Plan
Exhibit B:	Description of Averitt Land
Exhibit C:	Easement to Averitt Land
Exhibit D:	Conservation Deed Restriction
Exhibit E:	Guidelines
Exhibit F:	Condominium Documents
Exhibit G:	Right of First Refusal
Exhibit H:	Lease of Senior Center
Exhibit K:	Purchase & Sale Agreement for AHA Units
Exhibit L:	Purchase & Sale Agreement for Option A or B property

[illegible][illegible]

THE LOGS DO NOT CONTAIN "FALLS" AND COMPLETE OF THE FOLLOWING LOGS

107 5 - 1.4424 AC
 107 4 - 1.4424 AC
 107 3 - 1.4424 AC
 107 2 - 1.4424 AC
 107 1 - 1.4424 AC

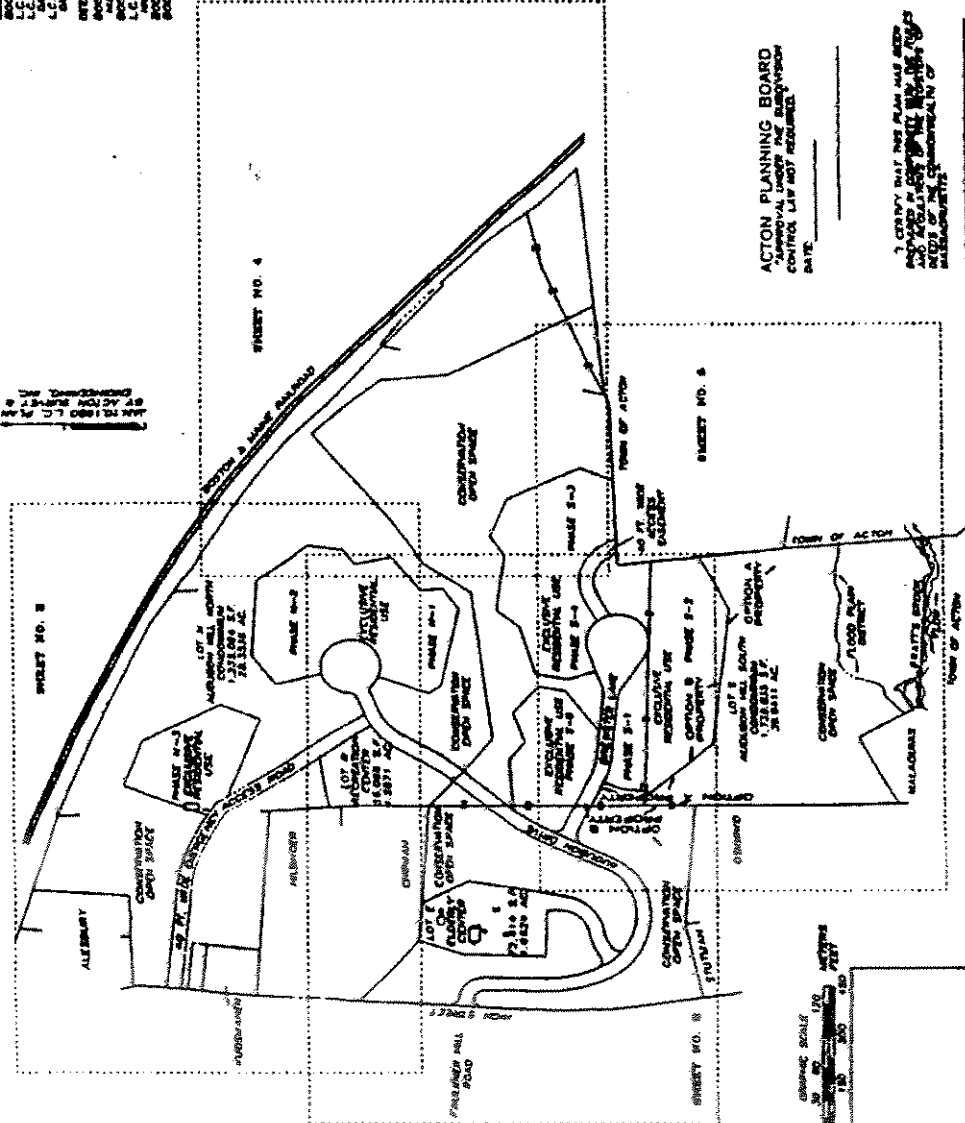
THE ABOVE INFORMATION WAS OBTAINED FROM THE FILES OF THE
FEDERAL BUREAU OF INVESTIGATION ON JANUARY 4, 1968.
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11-19-01 BY 60322 UCBAW

NOTE
THE FOLLOWING NOTES REFER TO A COMPREHENSIVE DEVELOPMENT AGREEMENT
BETWEEN FOT C. MARL TRUSTEE AND STRIFF PONT TRUST AND THE FORM OF
ACTION TO BE RECORDED HEREWITH.

THE ABOVE PROPERTY IS THE BALANCE OF THE LOOTS BE
 THE PROPERTY OF THE ABOVE PROPERTY IS THE BALANCE OF THE LOOTS BE
 THE PROPERTY OF THE ABOVE PROPERTY IS THE BALANCE OF THE LOOTS BE

THE SITE PLAN

ACTION SURVEY & ENGINEERING, INC.
377 CENTRAL ST. - ACTON - MASS.
JUNE 26, 1968
TELEPHONE: 1-800-227-1000

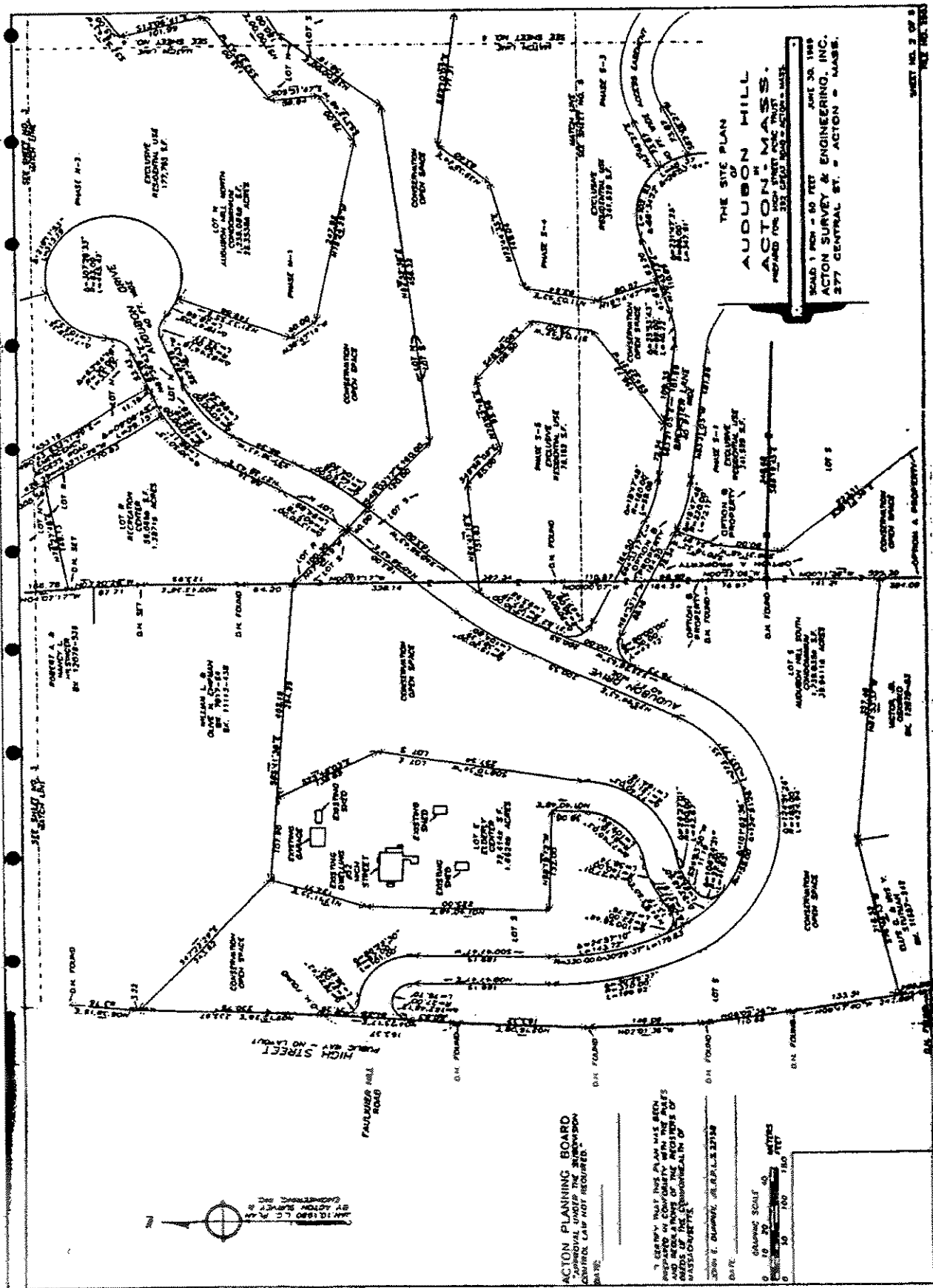
[illegible]

ACTION PLANNING BOARD
 "Approval under the Subversion
 Control Law not required."
 DATE _____

7. CERTAIN THAT THIS PLAN WAS APPROVED BY CONGRESS, THE HOUSE AND SENATE, AND ADOPTED BY THE MEMBERS OF THE CONGRESSIONAL COMMISSIONERS.

DATE _____
JOHN E. GILBERT - JR. P.I. SECTION

BRANDS: 170 180 190 200 210 220 230 240 250 260 270 280 290 300 310 320 330 340 350 360 370 380 390 400 410 420 430 440 450 460 470 480 490 500 510 520 530 540 550 560 570 580 590 600 610 620 630 640 650 660 670 680 690 700 710 720 730 740 750 760 770 780 790 800 810 820 830 840 850 860 870 880 890 900 910 920 930 940 950 960 970 980 990 1000 1010 1020 1030 1040 1050 1060 1070 1080 1090 1100 1110 1120 1130 1140 1150 1160 1170 1180 1190 1200 1210 1220 1230 1240 1250 1260 1270 1280 1290 1300 1310 1320 1330 1340 1350 1360 1370 1380 1390 1400 1410 1420 1430 1440 1450 1460 1470 1480 1490 1500 1510 1520 1530 1540 1550 1560 1570 1580 1590 1600 1610 1620 1630 1640 1650 1660 1670 1680 1690 1700 1710 1720 1730 1740 1750 1760 1770 1780 1790 1800 1810 1820 1830 1840 1850 1860 1870 1880 1890 1900 1910 1920 1930 1940 1950 1960 1970 1980 1990 2000 2010 2020 2030 2040 2050 2060 2070 2080 2090 2100 2110 2120 2130 2140 2150 2160 2170 2180 2190 2200 2210 2220 2230 2240 2250 2260 2270 2280 2290 2300 2310 2320 2330 2340 2350 2360 2370 2380 2390 2400 2410 2420 2430 2440 2450 2460 2470 2480 2490 2500 2510 2520 2530 2540 2550 2560 2570 2580 2590 2600 2610 2620 2630 2640 2650 2660 2670 2680 2690 2700 2710 2720 2730 2740 2750 2760 2770 2780 2790 2800 2810 2820 2830 2840 2850 2860 2870 2880 2890 2900 2910 2920 2930 2940 2950 2960 2970 2980 2990 3000 3010 3020 3030 3040 3050 3060 3070 3080 3090 3100 3110 3120 3130 3140 3150 3160 3170 3180 3190 3200 3210 3220 3230 3240 3250 3260 3270 3280 3290 3300 3310 3320 3330 3340 3350 3360 3370 3380 3390 3400 3410 3420 3430 3440 3450 3460 3470 3480 3490 3500 3510 3520 3530 3540 3550 3560 3570 3580 3590 3600 3610 3620 3630 3640 3650 3660 3670 3680 3690 3700 3710 3720 3730 3740 3750 3760 3770 3780 3790 3800 3810 3820 3830 3840 3850 3860 3870 3880 3890 3900 3910 3920 3930 3940 3950 3960 3970 3980 3990 4000 4010 4020 4030 4040 4050 4060 4070 4080 4090 4100 4110 4120 4130 4140 4150 4160 4170 4180 4190 4200 4210 4220 4230 4240 4250 4260 4270 4280 4290 4300 4310 4320 4330 4340 4350 4360 4370 4380 4390 4400 4410 4420 4430 4440 4450 4460 4470 4480 4490 4500 4510 4520 4530 4540 4550 4560 4570 4580 4590 4600 4610 4620 4630 4640 4650 4660 4670 4680 4690 4700 4710 4720 4730 4740 4750 4760 4770 4780 4790 4800 4810 4820 4830 4840 4850 4860 4870 4880 4890 4900 4910 4920 4930 4940 4950 4960 4970 4980 4990 5000 5010 5020 5030 5040 5050 5060 5070 5080 5090 5100 5110 5120 5130 5140 5150 5160 5170 5180 5190 5200 5210 5220 5230 5240 5250 5260 5270 5280 5290 5300 5310 5320 5330 5340 5350 5360 5370 5380 5390 5400 5410 5420 5430 5440 5450 5460 5470 5480 5490 5500 5510 5520 5530 5540 5550 5560 5570 5580 5590 5600 5610 5620 5630 5640 5650 5660 5670 5680 5690 5700 5710 5720 5730 5740 5750 5760 5770 5780 5790 5800 5810 5820 5830 5840 5850 5860 5870 5880 5890 5900 5910 5920 5930 5940 5950 5960 5970 5980 5990 6000 6010 6020 6030 6040 6050 6060 6070 6080 6090 6100 6110 6120 6130 6140 6150 6160 6170 6180 6190 6200 6210 6220 6230 6240 6250 6260 6270 6280 6290 6300 6310 6320 6330 6340 6350 6360 6370 6380 6390 6400 6410 6420 6430 6440 6450 6460 6470 6480 6490 6500 6510 6520 6530 6540 6550 6560 6570 6580 6590 6600 6610 6620 6630 6640 6650 6660 6670 6680 6690 6700 6710 6720 6730 6740 6750 6760 6770 6780 6790 6800 6810 6820 6830 6840 6850 6860 6870 6880 6890 6900 6910 6920 6930 6940 6950 6960 6970 6980 6990 7000 7010 7020 7030 7040 7050 7060 7070 7080 7090 7100 7110 7120 7130 7140 7150 7160 7170 7180 7190 7200 7210 7220 7230 7240 7250 7260 7270 7280 7290 7300 7310 7320 7330 7340 7350 7360 7370 7380 7390 7400 7410 7420 7430 7440 7450 7460 7470 7480 7490 7500 7510 7520 7530 7540 7550 7560 7570 7580 7590 7600 7610 7620 7630 7640 7650 7660 7670 7680 7690 7700 7710 7720 7730 7740 7750 7760 7770 7780 7790 7800 7810 7820 7830 7840 7850 7860 7870 7880 7890 7900 7910 7920 7930 7940 7950 7960 7970 7980 7990 8000 8010 8020 8030 8040 8050 8060 8070 8080 8090 8100 8110 8120 8130 8140 8150 8160 8170 8180 8190 8200 8210 8220 8230 8240 8250 8260 8270 8280 8290 8300 8310 8320 8330 8340 8350 8360 8370 8380 8390 8400 8410 8420 8430 8440 8450 8460 8470 8480 8490 8500 85

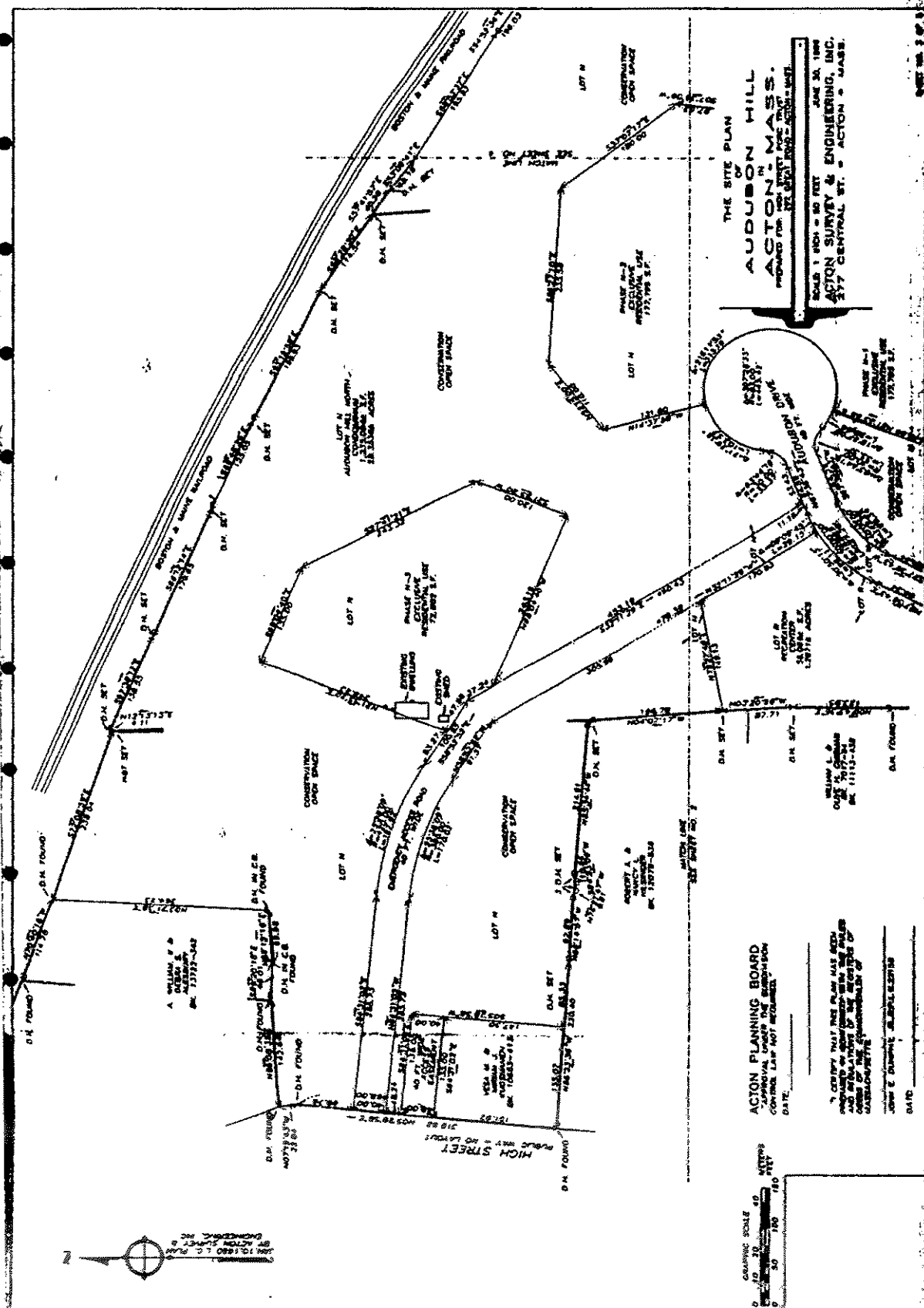


ACTION PLANNING BOARD
MASSACHUSETTS DEPARTMENT OF TRANSPORTATION
CONTROL LAW NOT REQUIRED

7. CERTIFY THAT THIS PLAN HAS BEEN
PREPARED IN CONFORMANCE WITH THE MASS.
AND RECORDS OF THE RECORDS OF
MASSACHUSETTS.

John E. Gannon, Jr., P.E., L.S. 23718
DATE: _____

GRAPHIC SCALE
0 50 100 150 FEET
0 50 100 150 METERS



THE SITE PLAN OF
AUDUBON HILL
ACTION, MASS.
ACTION SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTION - MASS.
SCALE: 1" = 50' - 50' SET
JAN 24 1966

ACTION PLANNING BOARD
APPROVAL UNDER THE SUBDIVISION
CONTROL LAW NOT REQUIRED
DATE: _____
BY: _____
DATE: _____

GRAPHIC SCALE 40
0 50 100
FEET
DATE: _____
BY: _____
DATE: _____

2241; 1' HIGH - 30 FEET
JUNE 30, 1969
ACTON SURVEY & ENGINEERING, INC.
399 CENTRAL ST. - ACTON - MASS.

0 AD 2 01 1200

ACTION PLANNING BOARD
-APPROVAL UNDER THE SUBCOMMISSION
CONTROL LIF NOT REQUIRED-
DATE

7. CERTAIN THAT THIS PLAN MAY BEIN
IMPLEMENTED IN CONJUNCTION WITH THE PLANS
AND ACTIVITIES OF THE MEMBERS OF
BUREAU OF THE CONGRESSIONAL
MANAGEMENTETTE

OFFICE OF THE ATTORNEY GENERAL

2018

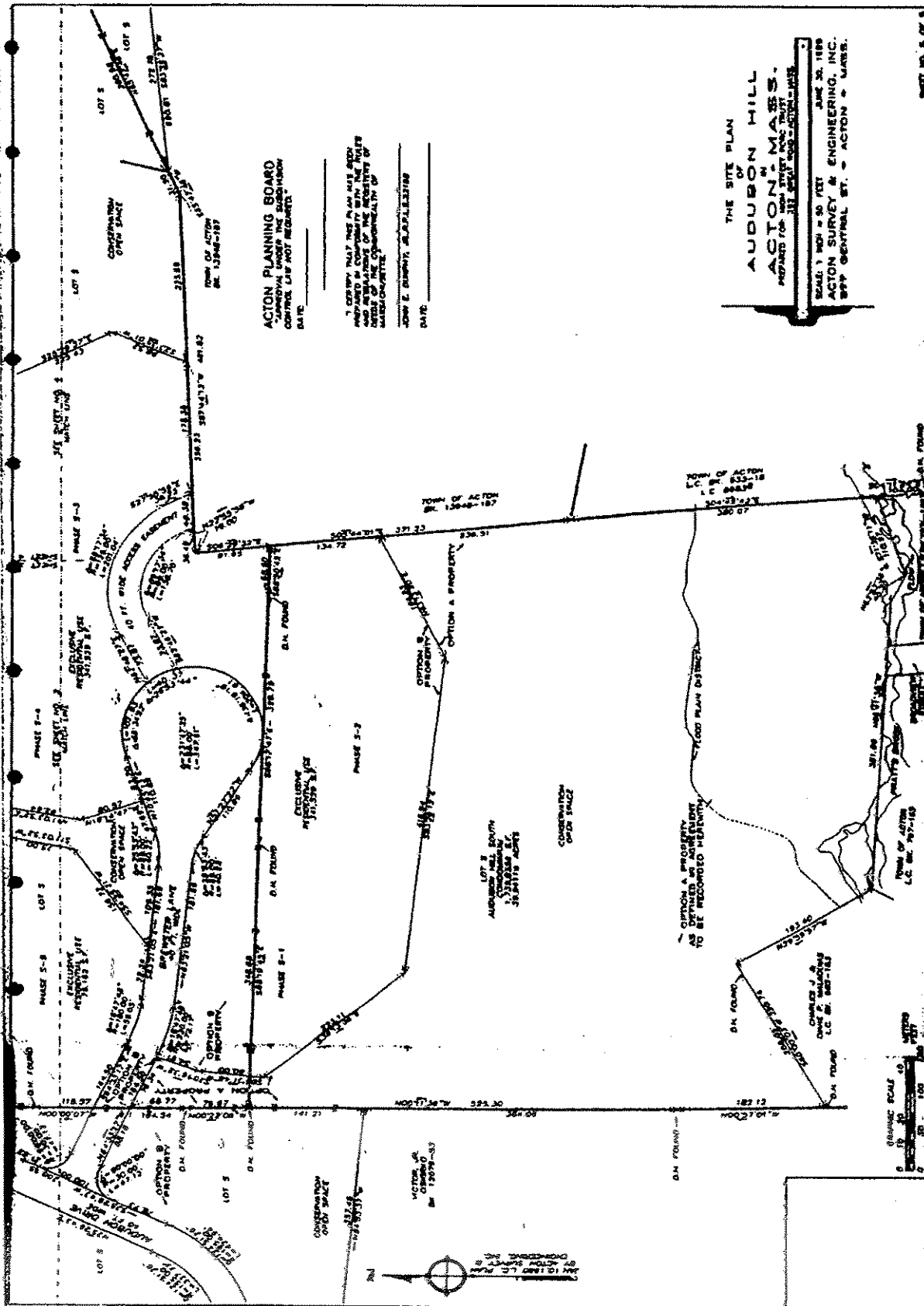


EXHIBIT B

Description of Averitt Land

Two parcels of land situated in the Town of Acton, Middlesex County, Massachusetts, the first parcel being shown as an area containing 26.5 acres of land, more or less, as shown on a plan entitled "Plan of Land in Acton, Mass. for Acton Conservation Commission" dated January 10, 1980, prepared by Acton Survey & Engineering, Inc., recorded with the Middlesex South Registry District of the Land Court at Book 13948, Page 187, as Plan No. 421 of 1980; the second parcel being shown as Lot C₁ as shown on a plan entitled "Subdivision of Lot C shown on a plan filed with Cert. of Title No. 8637 South Registry District of Middlesex County Land in Acton", dated May, 1918, prepared by Welsh & Parker, Civil Engineers, recorded with said Registry District as Certificate No. 8941, in Book 60, Page 433, and to which plans reference may be had for a more particular description.

EXHIBIT CEASEMENT

ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST, under Declaration of Trust, dated March 5, 1985, recorded in the Middlesex South District Registry of Deeds, Book 18611, Page 409 and Document 758061 in the Registered Land Section of said Deeds, in consideration of One (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, grants to the Inhabitants of the Town of Acton, an easement for the right to pass on foot or by motor vehicle in common with others so entitled, from High Street over Audubon Lane and Brewster Lane and over the roadway to be constructed within the 40 Ft. Wide Access Easement for purpose of access from and to High Street to the gravel parking lot in the land of the Town of Acton, all as shown on a plan entitled, "Open Space Plan of Audubon Hill in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, Acton Survey & Engineering, Inc., to be recorded herewith in said Deeds, reference to which plan may be had for a more particular description of said Easement.

The easement is to be limited strictly to access from High Street to the land of the Town of Acton for use of the Town of Acton land for passive recreational uses and all maintenance on the land for passive recreational purposes.

For the Grantor's title see deed of Norman R. Veenstra to the Grantor, dated October 8, 1987, recorded in said Deeds, Book 18611, Page 437 and as Document 758060 in the Registered Land Section of said Deeds.

Executed under seal this ____ day of June, 1989.

HIGH STREET PCRC TRUST

By: _____
Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of June, 1989 personally appeared before me the above named ROY C. SMITH, Trustee aforesaid, and acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My commission expires: _____

EXHIBIT D

AUDUBON HILL CONDOMINIUMS
CONSERVATION RESTRICTION

Roy C. Smith, Trustee, High Street PCRC Trust, under Declaration of Trust, dated March 5, 1985, recorded in Middlesex South District Registry of Deeds, Book 18611, Page 409, ("TRUST"), hereby grants to The Inhabitants of The Town of Acton, a municipal corporation, a Conservation Restriction in perpetuity on a parcel of land situated in Acton, Massachusetts.

The following conservation restrictions are intended to retain the aforesaid area predominantly in its natural, scenic and open condition in order to protect the natural and watershed resources of the town of Acton and to preserve the area for outdoor recreational and scenic enjoyment.

The terms of the conservation restriction are as follows: That neither TRUST nor its successors or assigns will perform the following acts nor permit others to perform them on any portion of the land described as "Conservation Open Space" as shown as

"The land on the easterly side of High Street, in Acton, Middlesex County, Massachusetts, being shown as Lots E, N, R and S on a plan entitled, "Open Space Plan of Audubon Hill, in Acton, Mass." Scale: 1 Inch = 40 Feet, August 1, 1988, revised to Acton Survey & Engineering, Inc., 277 Central June 1, 1989 of 46 sheets, being sheets 39 through 42 Middlesex South District Registry of Deeds, reference to which plan may be had for a more particular description of said Lots.

"Lot E containing 72,414+ square feet, 1.6624+ acres; Lot N containing 1,235,084+ square feet, 28.3536+ acres; Lot R containing 56,066+ square feet, 1.287+ acres; and Lot S containing 1,739,835+ square feet, 39.9411+ acres, and being Lots E, N, R and S, as shown on said plan, however otherwise bounded, measured or described.

"There is excluded from the foregoing description the following named areas: A) Audubon Drive, Brewster Lane, and access drives and B) "Exclusive Residential Use" areas: Phase N-1 and N-2 containing 177,795 square feet, Phase N-3 containing 72,802 square feet, Phase S-1, S-2, S-3 and S-4 containing 341,529 square feet, Phase S-5 containing 76,162 square feet, and being Phases N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5, however otherwise bounded, measured and described on the foregoing described plan."

hereby granting restrictions against all persons:

1. No building, sign, fence, utilities or other permanent structure will be constructed or permitted to remain on the area, without written approval from the Conservation Commission.
2. No soil, loam, peat, gravel, sand, rock or other mineral substance, refuse, trash, vehicles or vehicles parts, rubbish, debris, junk, waste or unsightly or offensive material will be placed, stored or dumped on the area.
3. No loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated or removed from said parcel in such a manner as to affect the surface of the area permanently.
4. No trees or other vegetation shall be cut or otherwise destroyed, except that the grantor reserves for itself, its successors and assigns, the right to conduct or permit the following activities on the area:
 - a. The planting and cultivation of trees, shrubs, flowers and other vegetation.
 - b. The cutting or pruning of trees, brush, grass or other vegetation to improve the scenic view and to implement disease prevention measures, including the cultivation and harvesting of forest products in accordance with recognized forestry conservation practices.
 - c. The installation, use, maintenance, repair and replacement, of roads, paths and any underground utility lines and underground sewage disposal systems.
5. No poultry or livestock of any kind shall be raised or kept in said area.
6. This conservation restriction does not grant either the Town of Acton or the public any right to enter or use said parcel. However, there is granted to the Conservation Commission a permanent easement of access to enter said parcel for the purpose of inspecting the premises and enforcing the foregoing restrictions.
7. Nothing in the above shall prohibit or restrain reasonable recreational use of the premises by the owner(s) thereof. Examples of reasonable recreational use would be walking, hiking, bicycling, sailing, skating and related quiet sports. Motorized recreational vehicles are excluded in this area.

8. Nothing in this instrument shall be interpreted to prevent the Conservation Commission (upon the petition of the TRUST) from designating additional recreational areas upon which non-structural amenities such as jogging trails may be built for recreational use.
9. Nothing in this instrument shall be interpreted to prevent the TRUST from performing excavation and regrading activities reasonably necessary for the maintenance of existing trails, ponds, and drainage courses.
10. Notwithstanding the provisions of this Conservation Restriction, the Grantor, his successors or assigns may place a sign or signs, each of a size not to exceed three (3) feet by two (2) feet, on or about the granted premises for the purpose of indicating the ownership, and permitted or restricted use, of the premises. Such signs shall not be deemed in violation of this Conservation Restriction.
11. Notwithstanding the provisions of this Conservation Restriction, the Grantor shall not be prohibited from conducting such activities on the granted premises as are necessary or required in connection with the construction of the Residential Development under a Special Permit granted by the Town of Acton Planning Board under the PCRC By-Law, or any amendments to that By-Law, provided that such activities do not interfere with the permanent condition of the land for the purpose of this Conservation Restriction.

Signed and sealed this 12th day of June, 1989.

HIGH STREET PCRC TRUST

By: Roy C. Smith

Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

June 12, 1989

Then personally appeared the above named Roy C. Smith, Trustee aforesaid and acknowledged the foregoing instrument to be the free act and deed of DGR Investment Realty Limited Partnership, before me.

Elizabeth M. Grier
Notary Public
Commission expires: Dec 16, 1994

Elizabeth M. Grier
Notary Public

My Commission Expires December 16, 1994

APPROVAL BY SELECTMEN

We, the undersigned Board of Selectmen of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

Nancy E. Tavelnier
William J. Tavelnier
Donald R. Gilbert
William J. Tavelnier

Date 6/23/89
 Date 6/23/89
 Date 6/23/89
 Date 6/23/89
 Date _____

APPROVAL BY THE PLANNING BOARD

We, the undersigned Planning Board of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

H. Gentry Brantford
David L. Brantford
James E. Brantford
James E. Brantford
Douglas Carnahan
Mary J. George

Date 6/22/89
 Date 12 June 89
 Date 12 June 89
 Date 12 June 89
 Date 12 June 89
 Date _____

APPROVAL BY THE CONSERVATION COMMISSION

We the undersigned Conservation Commission of the Town of Acton hereby certify that we approve the foregoing Conservation Restriction.

Kenneth W. Davis
Carol M. Place
John J. Place
Richard J. Place
James E. Place

Date 6-21-89
 Date 6-21-89
 Date 6-21-89
 Date 6-21-89
 Date 6-21-89
 Date _____
 Date _____

HIGH STREET PCRC
AUDUBON HILL

LEGAL DESCRIPTION OF OPEN SPACE

The land on the easterly side of High Street, in Acton, Middlesex County, Massachusetts, being shown as Lots E, N, R and S on a plan entitled, "Open Space Plan of Audubon Hill, in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, Acton Survey & Engineering, Inc., 277 Central Street, Acton, Mass., being sheets 39 through 42 of 46 sheets, to be recorded herewith in the Middlesex South District Registry of Deeds, reference to which plan may be had for a more particular description of said Lots.

Lot E containing 72,414+ square feet, 1.6624+ acres; Lot N containing 1,235,084+ square feet, 28.3536+ acres; Lot R containing 56,066+ square feet, 1.287+ acres; and Lot S containing 1,739,831+ square feet, 39.9411+ acres, and being Lots E, N, R and S, as shown on said plan, however otherwise bounded, measured or described.

There is excluded from the foregoing description the following named areas: A) Audubon Drive, Brewster Lane, and access drives and B) "Exclusive Residential Use" areas: Phase N-1 and N-2 containing 177,795 square feet, Phase N-3 containing 72,802 square feet, Phase S-1, S-2, S-3 and S-4 containing 341,529 square feet, Phase S-5 containing 76,162 square feet, and being Phases N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5, however otherwise bounded, measured and described on the foregoing described plan.

Lot R is to be used exclusively for recreational purposes by the residents of the exclusive residential-use areas, Phase N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5 as shown on the above described plan.

Lot E is to be used exclusively by the Town of Acton, through its Council on Aging or other similarly constituted organization, as a recreation center for the elderly.

Lot N and S, exclusive of the "Exclusive Residential Use" areas as defined above, are subject to a Conservation Restriction from Audubon Hill North Condominium and Audubon Hill South Condominium to the Town of Acton, dated June 12, 1989, to be recorded herewith in said Deeds.

The premises are subject to an easement granted by Roy C. Smith Trustee, High Street PCRC Trust to the Inhabitants of the Town of Acton, Massachusetts, for access from and to High Street over Audubon Drive, Brewster Lane and a 40 foot wide access East to an from land of the Town of Acton southerly and easterly of Lot S.

* Revised to June 1, 1990

EXHIBIT E

GUIDELINES

- A. An Eligible Purchaser shall be defined as:
 - 1. A Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser");
 - 2. Who, based on the Prospective Purchaser's income and assets, does not qualify with respect to the income and asset underwriting criteria established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the fair market value of an Unrestricted Unit;
 - 3. Who does qualify under the FHLMC or FNMA income and asset underwriting criteria for a mortgage loan for 80% of the maximum Resale Price of a Restricted Unit.
- B. The Town Designee shall maintain a waiting list of Persons interested in purchasing Restricted Units as they become available. Although Persons listed on the wait list may not be presumed to be Eligible Purchasers, the ACHC may preliminarily screen such Persons to determine whether they may qualify as Eligible Purchasers.
- C. The procedure for determining whether a Prospective Purchaser shall qualify as an Eligible Purchaser shall be as follows:
 - 1. A Prospective Purchaser shall submit a mortgage loan application to a bank, savings and loan association, trust company, or other institutional lender (a "Bank") for purchase money financing to buy a Restricted Unit.
 - 2. The Bank shall certify that (a) the Prospective Purchaser cannot qualify under FHLMC or FNMA income and asset underwriting criteria, based on the Prospective Purchaser's income and assets, for purchased money financing for at least 80% of the Restricted Unit's Appraised Value but that (b) the Prospective Purchaser does qualify under such standards for such financing for a loan of at least 80% of the Maximum Resale Price of the aforesaid Unit.
 - 3. The Seller shall then submit to the Town Designee the following documents:

- (a) a determination of the Appraised Value and Maximum Resale Price of the Unit to be sold, determined as provided in the Agreement, the cost of such determination to be divided equally between the Seller and the Prospective Purchaser;
 - (b) the Mortgage Lender's Certificate regarding the Prospective Purchaser's eligibility for a mortgage loan determined in accordance with paragraph C.2. above;
 - (c) a purchase and sale agreement executed by both the Prospective Purchaser and the Seller, containing a clause stating that such agreement may be rescinded should the Town disapprove of the proposed transaction; and
 - (d) an Affidavit of Compliance executed by both the Seller and the Prospected Purchaser pursuant to Section 3.4(e) of the Agreement.
4. The Town Designee shall review the documents submitted according to paragraph C.3. above, and within 10 days of such submission shall determine whether the Prospective Purchaser is an Eligible Purchaser pursuant the terms and conditions of the Agreement.

AUDUBON HILL SOUTH CONDOMINIUMMASTER DEEDPHASE I

This Master Deed of the Audubon Hill South Condominium made this day of _____, 1989.

WITNESSETH that I, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, Middlesex South District Registry of Deeds, of Acton, Middlesex County, Massachusetts, (hereinafter referred to as the "Declarant"), being the owner of certain premises in Acton, Middlesex County, Massachusetts, hereinafter described on Schedule A, by duly executing and recording this Master Deed, does hereby submit said premises to the provisions of Chapter 183A of the General Laws of Massachusetts and by this Master Deed does create a Condominium, to be governed by and subject to the provisions of said Chapter 183A (including any amendments thereto hereafter enacted) and to that end, said Declarant does hereby declare and provide as follows:

1. NAME OF CONDOMINIUM AND DESCRIPTION OF PREMISES

The name of the Condominium shall be the Audubon Hill South Condominium. The premises which constitute the condominium comprise the land (the "Land") situated at High Street, Acton, Middlesex

(res phased 03/30/89;

County, Massachusetts together with the improvements and building now existing and to be hereinafter constructed thereon (collectively, the "Condominium"), as shown on a plan entitled, "Audubon Hill South Condominium" dated _____, 1988, to be recorded herewith, said plan being the Condominium Plans hereinafter referred to, all which are recorded herewith, said premises being bounded and described as set forth on the attached Schedule A. Said Audubon Hill South Condominium Phase I consists of eight (8) units and is the first phase of a five (5) phase condominium. Said Declarant reserves the right, but not the obligation, to create additional phases, including any part thereof as shown on the plans hereinbefore mentioned. When and if all Phases are completed, the Condominium will contain forty (40) units. Said Phase I consists of two (2) buildings each containing four (4) units and has access through a private road named Audubon Drive and Brewster Lane to High Street, Acton, Massachusetts, all as shown on the Condominium Plans which shows the layout, location, unit numbers and dimensions of the units as built. Said premises are submitted to the provisions of Chapter 183A and are subject to the right and easement hereby reserved by the Declarant to construct the buildings, parking areas and roadways designated as Phases II through V, as shown on the Condominium Plans hereinabove referred to. The Declarant also reserves the right to have as an appurtenance to the construction of Phases II through V an

easement to pass and repass over the said land, including the right to store equipment and supplies, so far as the same are necessary and convenient for the construction of the said Phases II through V. The Declarant, its successors and assigns, shall have such right and easement to use driveways and walkways affording access to the said premises including the right and easement to construct additional driveways and walkways to serve the said buildings in Phases II through V provided that such easement for access and construction shall not interfere with the access of the owners of the units in Phase I to their units.

The Declarant further reserves the right in the construction and creation of subsequent phases (including the right to create sub phases within one or more phases), to change the order of such phases provided that in all instances the percentage of interest attributable to each such unit then existing shall be determined in a manner in conformity with the provisions of Chapter 183A, as amended.

The Declarant reserves the right to grant easements over, under, through and across the common areas of the Condominium Land and Building for the purpose of installing cable television lines serving the Units in the Condominium and such other equipment as may be necessary for the installation and operation of the same.

2. DEFINITIONS

All terms and expressions herein used which are defined in

Chapter 183A of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context otherwise requires.

3. LEGAL ORGANIZATION

The Audubon Hill South Condominium Rules and Regulations shall refer to those Rules and Regulations as shall be adopted by the board of governors of the Association from time to time.

The Audubon Hill South Condominium Association, Inc. hereinafter referred to as the "Association", shall be the organization of Unit Owners organized pursuant to Chapter 180 of the General Laws of Massachusetts, which corporation will manage and regulate the aforesaid Condominium, pursuant to the By-Laws of the Association, this instrument, and Chapter 183A of the General Laws of Massachusetts.

Membership in the Association is appurtenant to Unit Ownership in the aforesaid Condominium and shall not be severable in any manner therefrom and this provision may not be amended by the Declarant, its successors or assigns.

The Board of Governors of the Association shall consist of at least three and not more than five persons. Initially, there shall be three governors appointed by the Declarant (including successors in the event of vacancy) who shall serve until the second annual meeting of the Unit Owners. Thereafter, the governors shall be elected by and from the members of the Association.

Officers of the Association shall consist of a President, a

Treasurer and a Clerk. The initial officers shall be appointed by the Declarant. Subsequent officers shall be elected by the Board of Governors to serve as such officers and Unit Owners. In the event of a Corporate Unit Owner, the officer may be a director or officer thereof. In the event of a Trust Unit Owner, the officer may be a Trustee or beneficiary thereof.

The By-Laws of the Association shall refer to those By-Laws of the Association which have been duly adopted in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts by the Board of Governors and are incorporated herein by reference and such amendments thereto as may from time to time be enacted.

4. DESCRIPTION OF BUILDING

Phase I of the Condominium consists of two (2) buildings each containing four (4) units, for a total of eight (8) units, and having access through a walkway, driveway and Audubon Drive and Brewster Lane to High Street, all as shown on the Condominium plans above described and having such characteristics as are set forth in Schedule B and shown on the aforesaid Condominium Plans. The building has a masonry foundation, wood frame, wood siding with asphalt shingle roof.

5. DESIGNATION OF UNITS

Unit Designation, Number of Rooms, Approximate Area, Location and other descriptive information are as shown on the attached Schedule B, in the Condominium plans, all of which are incorporated

herein and made a part hereof.

6. INTEREST OF UNIT OWNER

The Owners of each Unit shall be entitled to an undivided interest in the common areas and facilities of the Condominium in the percentages set forth in the attached Schedule C, which percentages also reflect anticipated future development of a given order and mix of Units. The Declarant reserves the right to change such order and mix, and the corresponding percentage interest appertaining to the Units, including Units existing before as well as after such change, provided that such percentage interests as modified are in compliance with Chapter 183A, as amended.

7. BOUNDARIES OF UNITS

The boundaries of the Units are as follows:

- a. Floor: The upper surface of the concrete basement floor or concrete first floor, for units without basements.
- b. Ceiling: The plane of the lower surface of attic roof rafters.
- c. Interior Building Walls Between the Units:
The plane of the interior surface of the wall studs facing each Unit.
- d. Exterior Building Walls, Doors and Windows:
The planes of the interior surface of the wall studs or
in case of a concrete wall, the interior surface of said

concrete wall; as to doors, the exterior surface thereof; as to windows, the exterior surface of the glass and window frames.

8. MODIFICATION: OF UNITS

The owner of any Unit may not, at any time, make any changes or modifications of the exterior of said Unit or any interior changes which affect, or in any way modify, the structural or supportive characteristics or integrity of the building or its services; however, such Owner may modify the interior construction of such Unit in any manner not inconsistent herewith, and further may at any time and from time to time, change the use and designation of any room or space within such Unit, subject always to provisions of this Master Deed and the provisions of the By-Laws of the Association, including the Rules and Regulations promulgated thereunder. Any and all work with respect to the foregoing shall be done in a good and workmanlike manner pursuant to a building permit duly issued by the local building permit authority, if required, and pursuant to the plans and specifications which have been submitted to and approved by the Board of Governors of the Association. Such approval shall not be unreasonably withheld or delayed.

9.1 RESTRICTIONS ON THE USE OF ALL UNITS

(a) Each Unit is hereby restricted to residential use and occupancy by senior citizens or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any natural person of age 55 or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a unit to such person.

(b) Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen resides in the Unit owned by his or her son or daughter.

(c) Each Residential Unit shall be occupied by no more than two persons as a single-family residence, who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Board of Governor's, a member of the Unit owner's Immediate Family (other than spouse) may reside in such unit upon a showing of good cause.

(d) Overnight guests who are not senior citizens shall be allowed for reasonable visitation periods not to exceed one (1) week in duration, but children or grandchildren may visit for a period not

to exceed one (1) month per year, without the written permission of the Board of Governors.

(e) Any lease or rental agreement for any Unit shall be to a senior citizen, or to a senior citizen and his or her spouse, in writing and specifically subject to the Master Deed, the By-Laws of the Association and the Rules and Regulations of the Condominium, including the restrictions with respect to occupancy, and shall have a minimum initial term of six (6) months. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Master Deed. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the unit, amortization over the reasonable use and life; and any utility fees incurred by the owner in connection with the Unit.

Upon the rental of any Restricted Unit, the owner of said Unit shall provide the Board of Governors with documentation sufficient to substantiate the preceding requirements. The provisions of this last

Paragraph shall not apply to non-restricted units. A copy of all leases or rental agreements, together with proof of age of all occupants, as executed shall promptly be furnished to the Board of Governors who shall keep and maintain the same as part of its records. The Board of Governors shall also be furnished at the same time with written acknowledgment of the lessee that the lessee has received copies of and will comply with the provisions of such Master Deed, By-Laws and Rules and Regulations. Notwithstanding the foregoing, the said Declarant, its successors, assigns or affiliated entities (but not including a purchaser of an individual unit) shall have the further right to let or lease to a senior citizen as defined in Section 9.1 herein, any Units (Restricted or Non-Restricted) which have not been sold by it, including any such Unit later acquired or later leased by it upon such terms and for such periods, but not less than thirty (30) days, as it, in its sole discretion, shall determine.

(f) The occupants of each unit shall be entitled to keep one (1) pet, either a cat or a dog per unit and the keeping of any such pet shall be subject to the Rules and Regulations adopted by the Board of Governors and in the event that any such pet, in the sole discretion of the Board of Governors, causes or creates a nuisance, said pet shall be permanently removed from the property upon three (3) days' notice.

The use of Units by all persons authorized to use same shall be at all times subject to the provisions contained in this instrument, the By-Laws of the Association and such Rules and Regulations as may be prescribed and established to govern such use or which may hereafter be prescribed and established by the Board of Governors of the Association. Any Unit Owner found by the Massachusetts Superior Court to be in violation of the provisions of this Master Deed, By-Laws and Rules and Regulations of the Association shall be liable for the reasonable counsel fees incurred by the association in enforcing same.

The Association also reserve the right and easement to enter onto the premises, from time to time, at reasonable hours, for the purpose of reconstructing and repairing adjoining Units, common areas and facilities and to perform any obligations of the Association required or permitted to be performed under this Master Deed and/or the By-Laws of the Association.

Every Unit Deed conveying an interest in a Unit shall contain a Statement that such Unit is subject to the foregoing restrictions on the use of the units and the foregoing restrictions on use shall be attached to and made a part of each Unit Deed and shall be enforceable for a period of forty (40) years from the recording of this Master Deed.

9.2 RESTRICTIONS ON THE FIRST SALE OF THE RESTRICTED UNITS

(a) Unit Nos. 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 shall be known as the "Restricted Units". These restrictions shall not apply to all other units in the Condominium, which Units shall be known as the "Non-Restricted Units".

(b) The first sale of Unit Nos. 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38 and 48, Brewster Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a maximum gross sales price not to exceed seventy-five (75%) percent of the Fair Market Value of the price of the Non-Restricted Units (the "Discounted Price") (for example, if the price of the Non-Restricted Unit is Two Hundred Twenty Thousand (\$220,000.00) Dollars, the maximum gross sales price of a Restricted Unit would be One Hundred and Sixty-Five Thousand (\$165,000.00) Dollars; and the first sale of Unit Nos. 2, 4, and 25, Brewster Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a gross sales price of Sixty-Five Thousand and 00/100 (\$65,000.00) Dollars and have been presold to the Acton Housing Authority. The first sale of the Restricted Units, except for the sale of Unit Nos. 2, 4, and 25 which are subject to a First Option to Purchase in favor of the Acton Housing Authority shall be to an Eligible Purchaser. An Eligible Purchaser shall be defined as (1) a Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser"); (2) who, based on the Prospective Purchaser's income and assets, does not qualify with respect to the

income and asset underwriting criteria established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the Fair Market Value of an Unrestricted Unit; and (3) who does qualify under the FHLMC or FNMA income and asset underwriting criteria for a mortgage loan for 80% of the Maximum Resale Price of a Restricted Unit. The Declarant shall be required to obtain and record a certificate executed by the Town Designee as defined in Section 9.3 herein verifying that the Prospective Purchaser on the first sale of a Restricted Unit is an Eligible Purchaser. The Declarant further reserves the right to amend this restriction by substituting a different unit for any of the above-described "restricted units", so long as the total number of units so restricted herein is not reduced in number.

9.3 RESTRICTIONS ON THE RESALE OF THE RESTRICTED UNITS

(a) The Maximum Resale Price of the Restricted Units is the price, as of a given date, equal to seventy five (75%) percent of the Appraised Value of such Unit (For example, if at the time of the resale of a Restricted Unit, the Appraised Value of the Unit is Three Hundred Thousand (\$300,000.00) Dollars; the maximum resale price of the unit is Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. Appraised Value as set forth herein, shall mean as to a Restricted Unit, the Fair Market Value of the Restricted Unit as

determined by real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price reasonably established by the Developer. Such appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

(b) Price. For a period of forty (40) years from the date of this Master Deed no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit of and in connection with the transfer of such Restricted Unit, is equal to or less than Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such unit. In the event that the price restrictions contained herein are

not extended as provided herein or are withdrawn prior to the expiration of such forty (40) years period, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Town Designee. Means any person or entity designated by the Town in accordance with this Master Deed to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or designee of the Developer or his or hers successors and assigns. The Town hereby designates the Town Manager, or his or her assigns as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals and

certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

(e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit either Declarant, its successor or assigns or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of the Unit, identifying the Unit in question, the then-current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certificate thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(f) Certificate from Town. At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at the Acton Town Hall, Acton, Massachusetts or such other address for the Town as the Town designates by written notice to the Audubon Hill South Condominium Association. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or resale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

- (i) a Certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

(a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Deed; or

(b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

- (ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or resale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in (i) above referring to such Unit and such Certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 9.3 (i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days

from the date of the certificate of the Town Designee as provided above. If the conveyance of such Units pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Lack of Eligible Purchaser

- (i) If the owner of a Restricted Unit places a Restricted Unit for resale on the open market by written notice to the Town Designee indicating the availability of the Unit for resale and purchase or by listing the Unit for sale, with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original listing agreement, with the Real Estate Brokerage Company the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance

may the Restricted Unit be sold without compliance with the foregoing resale restrictions which restrictions shall then be forever released as to the particular restricted unit.

(ii) In the event a Restricted Unit is sold as described in Paragraph 9.3 (G)(1), the sum equal to the excess of the amount received by the Seller of the Unit and over the Unit's Maximum Resale Price shall be paid to the Town in trust for the benefit of the Town's Senior Citizens.

(iii) Prior to the sale of any Restricted Unit pursuant to Paragraph 9.3(g), the Seller shall deliver to the Town Designee, an affidavit executed under oath and acknowledged by both the Seller and the prospective purchaser of the unit in question, the then current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the prospective purchaser household and stating and affirming:

(a) That the Unit was listed for sale with a real estate brokerage company, the name and address of the real estate company, and the specific time periods of the listing, including reference to the multiple listing service wherein the Unit was so listed for sale.

(b) The agreed purchaser price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(c) That the Seller has contacted each person on the waiting list of persons maintained by the Town Designee, the names of such persons and that such persons either did not qualify as Eligible Purchasers or were unable to perform within the one hundred eighty (180) day period set forth in Section 9.3(G)(1) herein.

(d) A certificate from the Town similar in form and content to the Certificate described in Section 9.3(f) herein shall be required, except that such Certificate shall also state:

(i) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the Resale Price Restrictions contained in this deed.

(ii) That the Town designee on behalf of the Town waives the right to enforce the Resale Price Restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(iii) That the Town acknowledges receipt of funds required to be paid pursuant to section 9.3(G)(2) herein and that the unit in question is no longer a "Restricted Unit" and is released as a Restricted Unit and from these restrictions in perpetuity.

(h) Rights of Mortgages. Notwithstanding anything herein to the contrary, if the Holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure, the restrictions and covenants herein contained shall not apply to such holder upon such acquisition of the Property or to any purchaser (other than the Mortgagor) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Mortgagor) of the Property from such holder.

(i) Covenants to Run with the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Condominium and shall be binding upon the Declarant, its successors and assigns, for the benefit of and

enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

(j) Extension of Restrictions. The period of enforceability of the Restrictions as set forth in Sections 9.1, 9.2 and 9.3 herein may be extended if a Notice is executed by any one of the following: a Unit Owner, Unit Mortgagee, Condominium Association, Town of Acton or Acton Housing Authority and said Notice is recorded with the Middlesex South District Registry of Deeds.

9.4 Amendment to Restrictions. Notwithstanding anything in this Master Deed or in the Condominium Association or its Bylaws to the contrary, no Amendment of Sections 9.1, 9.2, and 9.3 of this Master Deed, except for the Declarant's reservation as set forth in the last sentence in Section 9.2(B), shall be effective without the written consent of the Town Designee, which consent shall not be unreasonably withheld. The balance of the provisions, terms and

conditions of this Master Deed may be amended without the consent of the Town's Designee, as allowed in Section 14 herein, so long as said Amendment does not modify Sections 9.1, 9.2 and 9.3 herein.

10. UNIT APPURTENANCES

Appurtenant to each Unit is the following:

- a. Membership in the Association which shall be in the same percentage as an individual Unit Owner common interest. Such membership is not assignable or severable from the ownership of such Unit.
- b. The exclusive easement to use the decks or porches adjacent to each Unit, if any there be, as shown on the said condominium plans recorded with the Master Deed which is incorporated herein by reference.
- c. The exclusive easement to use the garage and one parking space, each bearing the respective unit number, as shown on the said condominium plans recorded with the Master Deed which are incorporated herein by reference.

All of the Units shall have appurtenant thereto, in common with each other, the right and easement to use the common areas, including the exclusive easement, if any, as may be granted in the Master Deed and as shown on said Condominium plans, subject to and in accordance with the restrictions, limitations, provisions and

conditions as hereinbefore and hereinafter set forth in this Master Deed and the provisions of the By-Laws of the Association and the Rules and Regulations promulgated under the By-Laws.

11. COMMON AREAS AND FACILITIES

The common areas and facilities of the aforesaid Condominium comprise and consist of (a) the land described in the attached Schedule A as may from time to time be amended, together with the benefit of and subject to the rights and easements referred to in this Master Deed and on the Audubon Hill South Condominium plans annexed hereto; The said Common Areas are further subject to the right and easement of the Declarant to construct, mortgage and lease the structures constituting Phases II through V, and thereafter to submit the same as phases by Amendment to the Master Deed, as provided herein, provided, however, that until amendments are recorded by the Declarant, the structures will remain the property of the Declarant and shall not constitute part of the Condominium; (b) the foundations, structural columns, girders, beams, supports, exterior walls, interior floor joists and ceiling joists, including all studding and the common walls between the said Units of the building and between Units and the common areas; (c) roof of buildings, all sewer, water and electric lines, flue lines, conduits, ducts, pipes, plumbing, wiring, flues and other facilities for the furnishing of utility services which are contained in portions of the

building contributing to the service and/or support of the Unit, other Units or common areas and facilities, but not including the lighting, heating, plumbing and other fixtures and kitchen and bathroom cabinets located solely within said Unit service the same exclusively; (d) all such facilities contained within any Unit which serves part of the Condominium other than the Unit within which such facilities are contained; (e) the yards, lawns, gardens, driveways, walkways, and the improvements thereon and thereof, including walls, railings, steps, lighting fixtures and plants; (f) in the master television antenna systems and other facilities thereof, if any there be; (g) the parking lot and driveway subject to the exclusive easement of the unit owners; (h) the Senior Center (which shall be leased to the Town of Acton); (i) the Community Building and Recreation Lot; and (j) all other elements and features of the Condominium however designated or described excepting only the Units themselves as herein defined and described.

Notwithstanding anything to the contrary herein contained, the said common areas and facilities are subject to such exclusive rights, easements and limitations on use contained in other portions of this Master Deed or as may hereafter be established pursuant to the provisions of this Master Deed.

12. EASEMENTS AND ENCROACHMENTS: UNITS AND COMMON AREAS

If any Unit, now or hereafter, encroaches upon any other Unit or upon a portion of the common areas and facilities, or if any

portion of the common areas or facilities, now or hereafter, encroaches upon any Unit as a result of the construction, reconstruction, repairing, shifting, settling or movement of any portion of the improvements, a valid easement of the encroachment and for the maintenance for the same, shall exist so long as the building stands.

13. COMMON ELEMENTS: DETERMINATION OF PERCENTAGE

The determination of the percentage of interest of the respective Units in the common areas and facilities has been made upon the basis of the approximate relative fair market value of each Unit to the aggregate fair market value of all the Units in the Condominium, in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts. Any such amendments in subsequent phases to the Units then existing in the condominium as hereinbefore and hereinafter provided shall also be made on the foregoing basis.

14. AMENDMENT OF MASTER DEED

While the Declarant owns at least fifty (50%) percent of the percentage interest of the Units in the Condominium, this Master Deed may be amended by a majority vote of Unit Owners which shall constitute written consent of the Unit Owners and, by the written consent of the majority of the holders of the first mortgages on mortgaged Units, provided that any such amendment shall not substantially reduce the enjoyment or substantially increase the burdens of any Unit Owner.

Thereafter, this Master Deed may be amended subject to the restrictions of Chapter 183A of the General Laws of Massachusetts and, except as provided otherwise in this instrument or the By-Laws of the Association, by a vote of sixty-even (67%) percent in interest of the Unit Owners and written consent of at least fifty-one (51%) percent of the holders of the first mortgages on mortgaged Units. Notwithstanding the foregoing, no such amendment shall restrict or interfere with the right of the Declarant to sell, mortgage or otherwise dispose of any Condominium Unit owned by it.

Any amendment involving a change in percentage interest shall, subject to the provisions of Section 16 below, require the assent of all unit owners whose percentage interest is affected by such change. No amendment shall be effective until recorded with the said Registry of Deeds.

Notwithstanding any of the provisions herein or of Chapter 183A, the Declarant, its successors and assigns, reserves the right to construct on the premises such additional Units (or any lesser part thereof) as described in Paragraph 1 and Paragraph 11, and after such construction is substantially completed to amend this Master Deed creating Phases II through V (including any sub phases), as hereinbefore described, and each Unit Owner, his successors, assigns and mortgagees shall, by the acceptance and recording of his Unit Deed under this Master Deed and Amendments thereto, irrevocably

appoints the Declarant, its successors, assigns and mortgagees as his attorney to execute, acknowledge and deliver any and all instruments necessary to accomplish the provisions of this Master Deed. The right to amend this Master Deed to add such additional phase or phases shall expire seven (7) years from the date of recording this Master Deed. All future improvements with respect to the phases to be added shall be consistent with the initial improvements in terms of quality of construction.

15. TERMINATION

The Unit Owners may remove the property from the provisions of Chapter 183A of the General Laws of Massachusetts and this Master Deed by the procedure set forth in the appropriate section of said Chapter 183A, as may be amended from time to time.

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, each Unit Owner having an undivided interest therein in the same percentage of undivided interest as previously owned by him in the common areas and facilities.

The removal provided for in this paragraph and in the By-Law of the Association shall not bar the subsequent re-submission of the premises to the provisions of Chapter 183A of the General Laws of Massachusetts.

16. MORTGAGEE STATUS

Notwithstanding anything in this Master Deed or the Condominium Association or its By-Laws to the contrary, the following provisions shall apply for the protection of the holders, insurers or guarantors of the first mortgages (hereinafter "First Mortgagees") of record with respect to the Units and shall be enforceable by any First Mortgagee:

- a. In the even that the Unit Owners shall amend this Master Deed or the Condominium Association or its By-Laws to including therein any right of first refusal in connection with the sale of a unit, such right of first refusal shall not impair the rights of a First Mortgagee to:
 - (i) foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
 - (ii) accept a deed (or assignment) in lieu of foreclosure in the even of default by a mortgagor; or
 - (iii) sell or lease a Unit acquired by the First Mortgagee.
- b. Any party who takes title to a Unit by foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the Condominium Association or its By-Laws;